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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1902~~ 1903.

No. ~~144~~ 132.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY, APPELLANT,

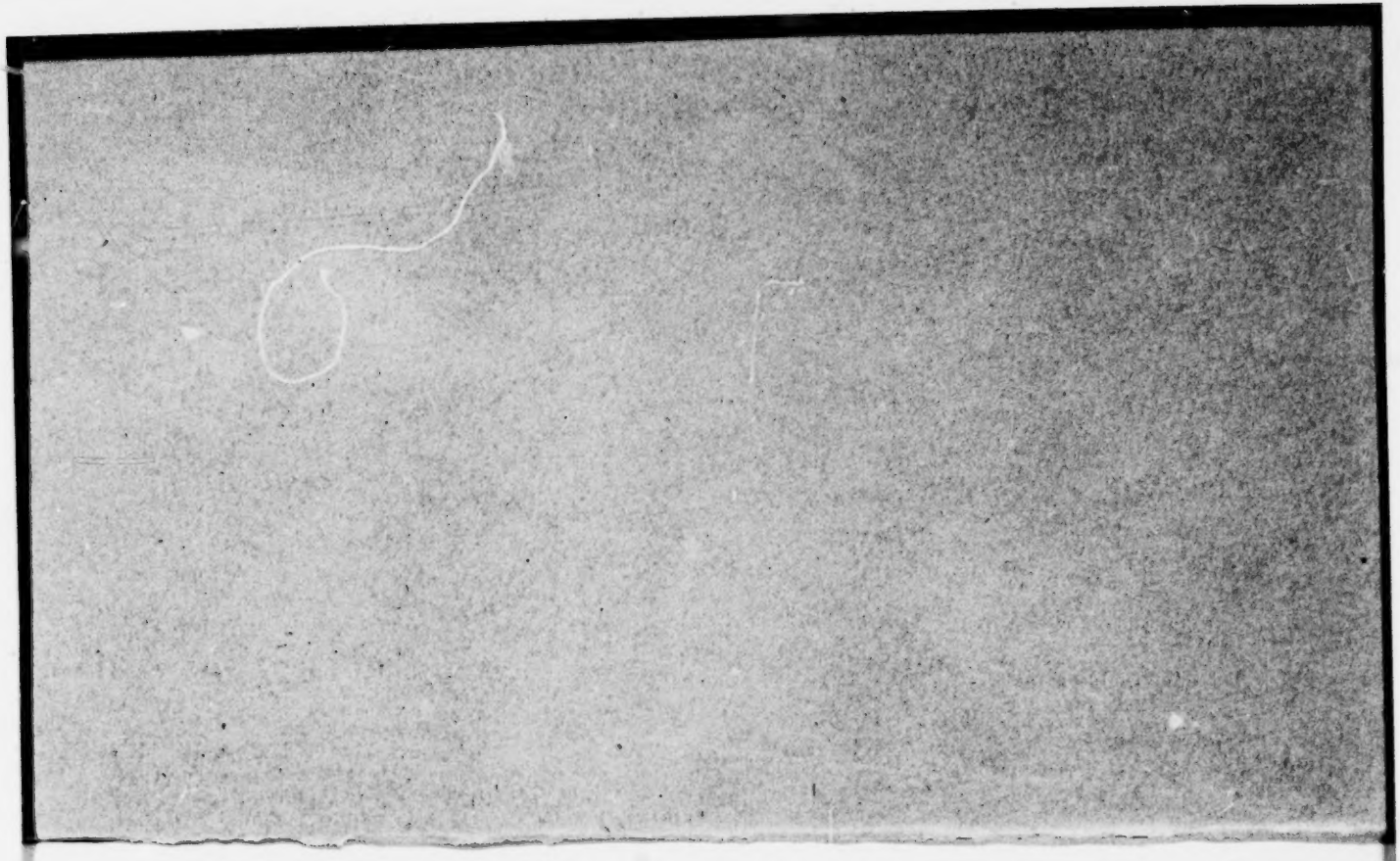
vs.

THE CITY OF CHICAGO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED SEPTEMBER 28, 1902.

(18,672.)



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

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THE PEOPLE'S GAS LIGHT AND COKE COMPANY, APPELLANT,

vs.

THE CITY OF CHICAGO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY *vs.* CITY OF CHICAGO.	25780.	In Chancery.

Mr. Nathaniel C. Sears, Mr. James F. Meagher, Mr. Edward S. Whitney, solicitors for complainant.

Mr. John W. Griggs, Mr. W. F. Sheehan, Mr. James F. Meagher, Mr. Thomas A. Moran, of counsel.

Mr. Granville W. Browning, Mr. Charles M. Walker, solicitors for defendant.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY *vs.* CITY OF CHICAGO.	25780.

To the clerk of the above-entitled court:

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the Supreme Court of the United States under the appeal heretofore perfected to said court, and include in the said transcript the following pleadings, proceedings and papers on file, to wit:

Bill of complaint,
Chancery subpœna and return,
Order of January 2, 1901,
Demurrer of City of Chicago,
Order of January 3, 1902,
Amendment to bill,
Opinion,
Order of June 6, 1902,
Amended bill,
Demurrer to amended bill,
Opinion,
Order of July 30, 1902, sustaining demurrer, etc.
Petition on appeal
Assignment of error
Bond on appeal
Order of Sept. 15, 1902 allowing appeal.

Said transcript to be prepared as required by law and the rules of this court and the rules of Supreme Court of the United States and file in the office of the clerk of the said Supreme Court of the United States, at Washington, before October 15th, 1902.

SEARS, MEAGHER & WHITNEY,
Solicitors for Appellant.

3 Pleas in the circuit court of the United States for the northern district of Illinois—northern division, in chancery sitting at the United States court-room, in the city of Chicago, in said district and division, before the Honorable Peter S. Grosscup, circuit judge of the United States for the seventh judicial circuit, on Wednesday, the thirtieth day of July, being one of the days of the regular July term of said court, in the year of our Lord one thousand nine hundred and two, and of our Independence the one hundred and twenty-seventh year.

MARSHALL E. SAMPSELL, *Clerk.*

4 THE PEOPLE'S GAS LIGHT AND COKE Company, a Corporation, *vs.* CITY OF CHICAGO. } 25780. In Chancery.

Be it remembered that on this day to wit: the thirty-first day of December in the year of our Lord one thousand nine hundred came The People's Gas Light and Coke Company, by its solicitors, Winston and Meagher and filed in the clerk's office of said court in the above-entitled cause its certain bill of complaint in words and figures following to wit:

5 *Bill of Complaint.*

UNITED STATES OF AMERICA, *State of Illinois,* } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division, to the February Rule Day, A. D. 1901.

To the honorable judges of said circuit court:

Your orator, The People's Gas Light and Coke Company, a corporation respectfully shows unto the court that it is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and that it is and has been engaged in the manufacture sale and distribution of gas in the city of Chicago for many years last past; that its principal place of business is in the city of Chicago; that it is a citizen of the State of Illinois, and a resident and an inhabitant in the northern division of the northern district of said State. That the city of Chicago is a municipal corporation organized and existing under and by virtue of the laws of the State of Illinois, and is a citizen and inhabitant of the northern division of the northern district of said State, that said city of Chicago derives all its powers from the said State of Illinois, and is the creature of the State of Illinois, and that the only powers which are vested in the said city of Chicago are those granted to it under and by virtue of the acts of the legislature of the State of Illinois.

Your orator further shows unto the court that your orator was organized as a corporation to do business in said State under and

by virtue of a special statute of the State of Illinois, approved
6 February 12th, 1855, entitled "An act to incorporate the People's Gas Light and Coke Company," as amended by an act entitled "An act to amend an act entitled 'An act to incorporate the People's Gas Light and Coke Company,' approved February 12th, 1855," which said amendatory act was approved February 7th, 1865.

Your orator further shows that said act of the legislature entitled "An act to incorporate the People's Gas Light and Coke Company" is in the words and figures following, to wit:

"An act to incorporate the People's Gas Light and Coke Company.

"SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That Matthew Laflin, L. C. Paine "Freer, A. G. Throop, D. A. Gage, Jno. S. Wallace, Geo. W. Snow, "H. B. Bay and R. H. Foss, and their associates be and they are "hereby created a body politic and corporate, with perpetual succession, by the name and style of 'The People's Gas Light and Coke "Company,' and by that name they and their successors shall be "capable in law of contracting and being contracted with, suing and "being sued, defending and being defended in all courts and places "and in all matters and places whatsoever, with full powers to acquire, hold, occupy and enjoy all such real and personal estate as "may be necessary and proper for the construction, extension and "usefulness of the works of said company, and for the management "and good government of the same; and they may have a common "seal, and the same may alter break and renew at pleasure.

"SEC. 2. The corporation hereby created shall have full power "and authority, forthwith upon their due organization under this "act, to proceed to the erection of the necessary works for the manufacture of gas and coke, within said city of Chicago and on and "after the 12th day of February, A. D. 1859, to manufacture and "sell gas, to be made from any or all the substances or a combination thereof, from which inflammable gas is usually obtained, and "to be used for the purpose of lighting the city of Chicago or the "streets thereof and any buildings, manufactories, public places or "houses therein contained, and to erect all necessary works and apparatus as aforesaid; and on and after the said 12th day of February, 1859, or sooner by and with the consent of the Chicago Gas "Light and Coke Company, to lay pipes for the purpose of conducting the gas in any of the streets or avenues of said city, with the "consent of the city council: Provided, that no permanent injury or "damage shall be done to any street, lane or highway in said city. "The real estate which this corporation is entitled to hold shall not "exceed in value one hundred thousand dollars.

"SEC. 3. The capital stock of said company shall not exceed five "hundred thousand dollars, to be subscribed for and paid in such "proportions as shall be prescribed by the by-laws and rules for "regulating the concerns of said company as they shall think proper "and necessary respecting the management and disposition of the "stock, property and estate of said company, the duties of the officers

"and agents to be employed, the number and election of directors, "and all such matters as appertain to the concerns of said company.

"SEC. 4. It is an express provision of the foregoing act of incor- "poration that the said company shall furnish and supply to the "city of Chicago, for all its public uses, at the election of the 7 "proper authorities of said city, a sufficient supply of gas, at "a rate not exceeding two dollars per thousand feet; and the "inhabitants of said city, at a rate not exceeding two dollars and fifty "cents per thousand feet.

"Approved Feb. 12, 1855."

Your orator further shows that the act entitled "An act to amend an act entitled 'An act to incorporate the People's Gas Light and Coke Company,' approved February 12th, 1885," is in the words and figures following to wit:

"An act to amend an act entitled 'An act to incorporate the People's "Gas Light and Coke Company,' approved February 12, 1855.

"SEC. 1. *Be it enacted by the people of the State of Illinois, repre-* "*sented in the General Assembly,* That the second section of said act "be and the same is hereby so amended as to read as follows viz: "The corporation hereby created shall have full power and authority "forthwith to proceed to the erection and maintenance of the neces- "sary works for the manufacture of gas and coke within said "city of Chicago, and to manufacture, supply and sell gas, to be "made from any and all substances, or a combination thereof, from "which inflammable gas is usually obtained, and to be used for the "purpose of lighting the city of Chicago, any streets, buildings, "manufactories, public places or houses, therein contained, and to "erect and use all necessary works and apparatus for such purposes "aforesaid, and with the consent of the common council of said city, "to lay down and use all necessary pipes for the conducting of gas "in and along any of the streets, alleys, avenues or public squares "of said city: *Provided,* That no permanent injury or damage shall "be done to any such street, alley, avenue or public square by the "laying down of any such pipes.

"SEC. 2. That section three of the said act be and the same is "hereby so amended as to read as follows, viz: The capital stock of "said company shall be five hundred thousand dollars, and may be "increased from time to time, at the pleasure of said corporation, it "may be divided into such shares, subscribed for, paid and trans- "ferred in such proportions and manner as shall be prescribed by "the by-laws and regulations of said company.

"SEC. 3. All the corporate powers of said corporation shall be "vested in and exercised by a board of directors, and such officers "and agents as said board shall appoint. The board of directors "shall consist of not less than three nor more than five stockholders, "who shall be chosen by the stockholders at such time and in such "manner as the said corporation shall by its by-laws prescribe, and "shall hold their office until their successors are elected and quali- "fied, and may fill any vacancies which may happen in the board

"of directors by death, resignation or otherwise; they may adopt "such by-laws, rules and regulations for the government of said "corporation and the management of its affairs and business as they "may think proper, not inconsistent with the laws of this State, and "the fourth section of said act is hereby repealed; but ten years "after the passage of this act the common council of the city of "Chicago may, by resolution or ordinance, regulate the prices "charged by said company for gas; but said common council of the "city of Chicago, shall, in no case, be authorized to compel the said "company to furnish gas at a less rate than three dollars per thou-"sand feet.

"SEC. 4. The said corporation is hereby authorized to borrow "money and to mortgage or lease any of its property or franchises.

"SEC. 5. This act shall be deemed a public act, and noticed as "such by all courts without pleading, and take effect from and after "its passage.

8 "Approved February 7, 1865."

Your orator further shows that after the passage of said act approved February 12th, 1855, as amended by the act approved February 7th, 1865, as hereinbefore set forth, your orator, The People's Gas Light and Coke Company, did act upon the privileges and powers therein granted and did accept the same, and did thereupon proceed to construct gas works in the city of Chicago, and did with the consent of said city proceed to lay mains for the delivery of gas to consumers thereof in the city of Chicago, and did invest many million dollars in the enterprise of constructing gas works and of delivering gas to consumers thereof in the city of Chicago, and that thereby the said charter granted to the People's Gas Light and Coke Company, approved February 12th, 1855, as amended by the amendatory act approved February 7th, 1865, did become and was and now is a contract by and between the said People's Gas Light and Coke Company and the people of the State of Illinois. And your orator further shows that from the date of said act approved February 12th, 1855, as hereinbefore set forth as amended by the act approved February 7th, 1865, as hereinbefore set forth, the said People's Gas Light and Coke Company did continuously thence hitherto remain in and engage in the business of manufacturing, selling and distributing gas in and through the streets of the said city of Chicago, and that the said People's Gas Light and Coke Company is now engaged in the business of manufacturing, selling and distributing gas in the city of Chicago, and that said contract by and between the said People's Gas Light and Coke Company and the said people of the State of Illinois by means thereof still is a contract in full force and effect, and has not been repealed, annulled or canceled.

Your orator further shows unto the court that, relying upon the said contract, your orator has invested its capital and funds in the developement of its business in the city of Chicago, and on the date of the filing of this bill of complaint your orator owns real estate

in the city of Chicago to the value of several millions of dol-
9 lars; that it owns personal property in the said city of Chicago to the value of several millions of dollars; that it has many factories, retorts, plants and other apparatus for the manufacture, sale and distribution of gas in the city of Chicago, and that it has upwards of seventeen hundred miles of pipes and mains laid in the streets of said city, and that it is now engaged in the operation of the plants and apparatus aforesaid, and in the distribution of gas through the pipes aforesaid to the city of Chicago and to the citizens thereof.

Your orator further shows unto the court that under and by virtue of the charter granted to your orator by the people of the State of Illinois, as hereinbefore set forth, which said charter is still in full force and effect, your orator was given, by the legislature of the State of Illinois, full authority touching the management of its affairs and business and full authority to fix such rates as in *the* judgment *of* your orator might deem reasonable, best or proper to charge for the gas sold and delivered by your orator through the pipes laid in the streets of the city of Chicago to the consumers and customers of your orator situated and residing therein; and that by said charter it was provided that the common council of the city of Chicago should in no case be authorized to compel your orator to furnish gas at a less rate than three dollars per thousand cubic feet.

Your orator further shows unto the court that, pursuant to the privileges and powers granted unto your orator by the terms of its charter, as hereinbefore set forth, your orator has, from time
10 to time fixed the rates charged by your orator for gas sold by it in the city of Chicago at such figures as in the judgment of your orator your orator deemed it proper to charge, and has from time to time decreased said rates until the price thereof now charged by your orator for illuminating gas manufactured and sold by it in the city of Chicago to residents thereof and to the city of Chicago is the net rate of one dollar per thousand cubic feet; and your orator further shows unto the court that at the time when your orator was first incorporated and began to do business in the city of Chicago, your orator charged for the gas manufactured and sold by it to the residents of the city of Chicago and to the said city of Chicago a rate much higher than the net rate of one dollar per thousand cubic feet, and that the reductions from time to time made by your orator from the higher rate originally charged by your orator to the net rate of one dollar per thousand cubic feet have been made by your orator of your orator's own free will and voluntary act and have not been by reason of any ordinance of the city of Chicago compelling or attempting to compel your orator to make any reduction or reductions in the price charged by your orator for the gas sold and delivered by it in the city of Chicago to residents thereof and to the city of Chicago; and your orator here shows that the city of Chicago itself is a customer of your orator and has been for many years last past, and that its bills as a consumer of the gas manufactured and sold by your orator during the year 1899 and consumed

by said city of Chicago amounted to upwards of five hundred and fifty thousand dollars, and that the bills for gas manufactured, sold and delivered by your orator to the city of Chicago, and consumed by the said city of Chicago, for the year 1900, amounted to upwards of four hundred and ninety thousand dollars,

11 that the city of Chicago is a customer of your orator in the same sense and in the same way and under the same legal conditions as each and every customer of your orator in the city of Chicago; and your orator further shows unto the court that it has never delivered gas to the city of Chicago except upon contract first made by and between your orator and the city of Chicago, and that it has never delivered gas to any customer or patron in the city of Chicago except upon contract first made by and between said customer and your orator, and in each and every of said cases your orator has determined what the price should be for the gas to be furnished by your orator to such customer and to the city of Chicago in accordance with the privileges and powers granted to your orator in its charter as aforesaid.

Your orator further shows unto the court that notwithstanding the privileges and powers conferred upon your orator by its charter as aforesaid, and notwithstanding the inhibition contained in said charter, providing that the common council of the city of Chicago should in no case be authorized to compel your orator to furnish gas at a net rate less than three dollars per thousand cubic feet, and notwithstanding the contract thereby existing by and between your orator and the people of the State of Illinois, the said common council of the city of Chicago, as representing said city, did recently arbitrarily, unlawfully and unwarrantably, claiming that it has the power to regulate the price of gas sold and distributed by your orator in the city of Chicago to the city of Chicago and to residents thereof, and without investigation or judicial proceedings of any kind, and without giving or permitting a hearing of any sort to your orator, on or about the fifteenth day of October, 1900, did pass a certain ordinance, which said ordinance is in the words and figures following to wit:

"Be it ordained by the city council of the city of Chicago:

SECTION 1. That no corporation, company or companies, firm or persons manufacturing, selling, supplying or distributing gas in the

12 city of Chicago for illuminating or for fuel purposes shall charge, exact, demand or collect from any consumer thereof more than the sum of seventy-five (75) cents per one thousand (1000) cubic feet of gas consumed or used. Said sum of seventy-five (75) cents per one thousand (1000) cubic feet of gas shall be the net price charged, exacted, demanded or collected from each consumer. Manufactured gas so furnished shall afford a light of not less than twenty (20) candle-power, to be measured and ascertained at the place of consumption in said city by the most modern appliances known to science for measuring the candle-power of illuminating gas.

Provided, however, that any corporation, company or companies,

firm or person distributing or selling gas for fuel or illuminating purposes in the city of Chicago may, in addition to said seventy-five (75) cents per one thousand cubic feet of gas furnished to such consumer, add a penalty of not exceeding ten (10) cents for each one thousand (1000) cubic feet of gas so supplied to such consumer for delinquency or non-payment of the bill, statement or charge of said corporation company or companies, firm or person after ten days from the date at which said bill, statement or charge is made and furnished to such consumer.

SECTION 2. That any company, corporation, person or persons who shall remove any meter or meters from the house, store, factory or premises of any consumer of gas in the city of Chicago, against the will and consent of any such consumer of gas who is willing to pay for gas furnished him, it or them by any such company, corporation, person or persons, and tenders the amount due at the price established and fixed in section 1 of this ordinance, shall be subject to a penalty of not less that twenty-five (25) nor more than two hundred (200) dollars for each and every offense, provided, however, that any company corporation, person or persons furnishing gas to consumers in the city of Chicago shall have the right to remove any meter or meters for the purpose of repairing the same, on condition that such meter or meters so removed shall be replaced or a new one substituted in its place within twenty-four (24) hours of the time of the removal of any such meter or meters.

SECTION 3. That any company, corporation, person or persons who shall, in violation of the provisions of the preceding sections, charge or require the city of Chicago, or any citizen thereof, or any consumer of gas therein, to pay for gas furnished to it or them, or either of them, a sum in excess of seventy-five (75) cents per thousand cubic feet, or who shall furnish to the said city of Chicago, or any citizen thereof, manufactured gas less than twenty (20) candlepower shall be subject to a penalty of not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00) for each and every offense.

SECTION 4. This ordinance shall be in full force and effect from and after the 2nd day of January, A. D. 1901, provided, that said ordinance shall not go into effect until it has been duly published, as provided by law."

Your orator further shows that the said ordinance was not thereafter vetoed, repealed, modified or amended, and that the same remains in full force and effect, as the enactment of said common council of the city of Chicago, and of said city of Chicago.

13 Your orator further shows unto the court that the history of the passage, of said ordinance by the common council of the city of Chicago is as follows: Your orator shows that at a meeting of the common council of the city of Chicago, held on the twenty-fourth day of September, 1900, there was presented to said common council for its consideration, by Alderman Patterson, he being then and there a member of said common council, an ordinance regulating and fixing the maximum price of gas, which said ordinance was there-

upon referred to the committee on judiciary, that being one of the regular organized committees of said common council; that on the same date there was presented by Alderman Eisfeldt, he being then and there an alderman of the city of Chicago and a member of the common council, an ordinance concerning the distribution and price of gas which was also referred to said committee on judiciary; that afterwards, to wit: on the first day of October, 1900, at the next meeting of the said committee on judiciary, the said committee on judiciary did report unto the said common council of the city of Chicago upon the said two ordinances presented as aforesaid by Alderman Patterson and Eisfeldt respectively, and recommended in lieu thereof the ordinance hereinbefore set forth as having been passed by the said common council of the city of Chicago, which said report was thereupon deferred and published.

Your orator further shows unto the court that the membership of said committee on judiciary of the common council of the city of Chicago is composed largely of attorneys and counsellors at law, engaged in the practice of the law in the city of Chicago, State of Illinois, and that the said committee on judiciary did before the presentation of the ordinance aforesaid make a careful investigation of the rights and powers of the said city of Chicago, and that the said committee on judiciary did report the same to the common council of the city of Chicago, believing that there was vested in the said city of Chicago full and ample authority to regulate and fix the price of gas to be charged by your orator for the gas manu-
14 factured, sold and distributed by it to the city of Chicago and to the residents thereof; and your orator further shows unto the court that the common council of the city of Chicago passed said ordinance believing and claiming that it, the said common council of the city of Chicago had full and ample power and authority to regulate the price of gas sold and distributed by your orator to the city of Chicago and to the residents thereof.

Your orator further shows unto the court that the said common council of the city of Chicago duly passed the said ordinance aforesaid, having first had the advice of its committee on judiciary which recommended the passage of the ordinance as the same was passed.

Your orator further shows unto the court that on the twenty-sixth day of May, 1899, the corporation counsel of the city of Chicago reported to said common council of the city of Chicago that under a decision recently announced by the supreme court of the State of Illinois he believed it to be the law that if the case were presented to the courts of the State of Illinois the courts of the State would hold that there was vested in municipal corporations under the general police power granted to them by the statutes of the State of Illinois the right to regulate the demands and rates charged by quasi-public corporations.

Your orator further shows unto the court that the said common council of the city of Chicago, in the passage of the ordinance hereinbefore set forth as having been passed by said common council on October 15th, 1900, relied not only upon the recommendation and

advice of its said committee on judiciary, composed of attorneys and counsellors as aforesaid, but also relied upon the opinion of the corporation counsel of the city of Chicago rendered to it as aforesaid on the twenty-sixth day of May, 1899, at a regular meeting thereof.

15 Your orator further shows that under and by virtue of the general police powers claimed by the city of Chicago to have been granted to it by the legislature of the State of Illinois, the city of Chicago has assumed the right to regulate and fix the price at which gas shall hereafter be furnished by your orator to the citizens of the city of Chicago and to the city itself.

Your orator further shows unto the court that the said city of Chicago so claims the said right as aforesaid regardless of the privileges and powers conferred upon your orator by its charter from the State of Illinois and of the inhibition contained therein.

Your orator further shows unto the court that the said ordinance of the city of Chicago was passed in good faith by the unanimous vote of the members of the said common council of the city of Chicago being in attendance upon said meeting on October 15th 1900, which your orator shows was a regular meeting of said common council; and that the said city of Chicago announces and has announced that on and after the second day of January, 1901, it will enforce the said ordinance against your orator in the event of any violation of the terms thereof by your orator; and your orator further shows unto the court that your orator has been advised by sundry citizens of the city of Chicago that in the event of the failure of your orator to comply with the terms of the ordinance so passed by the said city of Chicago as aforesaid, they would immediately take steps by means of prosecutions in the courts of the State of Illinois to enforce the penalties provided by said ordinance upon your orator in the event of a violation by your orator of any of the terms of said ordinance as aforesaid.

Your orator further shows unto the court that it has now upwards of three hundred thousand (300,000) customers in the city of Chicago, in addition to the city of Chicago itself, to which

16 your orator is daily selling and distributing gas, and that during the year 1900, your orator sold and delivered to such customers at the rates specified an enormous amount of gas, aggregating many million cubic feet; and that on the date of the passage of said ordinance your orator was engaged in selling illuminating gas to said customers, including the city of Chicago, at the net rate of *old* dollar per thousand cubic feet, which said net rate of one dollar per thousand cubic feet your orator had fixed as the price of its illuminating gas sold and delivered in the city of Chicago and which said rate so fixed by your orator had been charged by your orator in the city of Chicago for some two or three years last past.

Your orator further shows unto the court that it fixed the said rate of one dollar net per thousand cubic feet pursuant to the privileges and powers conferred upon your orator by its charter as aforesaid, and because in the judgment of your orator it was a just fair and

proper rate for your orator to charge for its illuminating gas as aforesaid.

Your orator further shows unto the court that if, after the second day of January, 1901, your orator should fail to comply with the terms of said ordinance, and should decline to furnish gas at the rate fixed therefor in said ordinance, but on the contrary should continue to demand of its customers the rate which your orator has fixed as being the just, fair and proper rate for your orator to charge to said customers,—that is to say, should continue to charge said customers one dollar net per thousand cubic feet for gas sold and distributed to them—then under and by virtue of the terms of said ordinance any customer of your orator in the city of Chicago could begin a prosecution against your orator for the violation of
17 the terms and conditions of said ordinance; and your orator charges the fact to be that in the event of the failure of your orator to comply with the terms and conditions of said ordinance many thousands of such suits will be started by the customers of your orator in the city of Chicago, in addition to such suits as the city of Chicago might see fit to start in attempting to enforce the provisions of said ordinance; and your orator shows unto the court that thereby and by means thereof your orator would be subjected to a multiplicity of suits, that it would be subjected to enormous expense in defending the same, that by reason thereof your orator would be unable to attend to its ordinary and legitimate business pursuant to the privileges and powers conferred upon it by its charter from the people of the State of Illinois, and that the litigation arising therefrom would be endless and that the suits arising thereby would be numberless.

Your orator further states unto the court and charges the fact to be that in the event of the failure of your orator to comply with the terms and conditions of said ordinance, the said city of Chicago will, on and after the second day of January, 1901, attempt to enforce the provisions of said ordinance and to compel your orator to comply therewith. And your orator charges the fact to be that in pursuance of such effort, on the part of said city of Chicago, to compel your orator to comply with the terms and conditions of said ordinance, the said city of Chicago will begin, or cause to be begun, an enormous number of such suits, and will thereby harrass and disturb your orator, in the pursuance of its business aforesaid, and will make it impossible for your orator to conduct its business, as aforesaid, in the said city of Chicago, because thereof.

Your orator further shows unto your honors that the powers and privileges conferred upon your orator, by its said charter, to
18 fix the rates of the gas sold and distributed by your orator, is a property right, and as such is protected by the Constitution of the United States and the laws thereof.

Your orator further shows unto the court that the passage of said ordinance and the enforcement thereof, by the common council of the city of Chicago, is and will be an attempt upon the part of the said city of Chicago to reduce the price of the gas manufactured sold and distributed by your orator in and through the city of Chi-

cago, in violation of the contract between your orator and the people of the State of Illinois, as hereinbefore set forth, and is a violation of the rights of your orator, as guaranteed by the fifth amendment to the Constitution of the United States, wherein and whereby it is provided that no person shall be deprived of life, liberty or property, without due process of law; that it is a further violation of the rights of your orator as guaranteed to it by the fourteenth amendment to the Constitution of the United States of America, wherein and whereby it is provided that no State shall deprive any person of life, liberty or property without due process of law; that it is a further violation of the rights of your orator, as guaranteed to your orator by the first paragraph of section 10 of article 1 of the Constitution of the United States of America, wherein and whereby it is provided that no State shall pass any law impairing the obligation of contracts; that it is a further violation of the rights of your orator, as guaranteed to it by the Constitution of the United States of America, in that it denies to your orator the equal protection of the law, all of which constitutional guaranties this complainant invokes and relies upon.

Your orator further shows unto the court that the price fixed by the common council of the city of Chicago, in the ordinance hereinbefore set forth, is an unreasonable price; that your orator cannot sell and distribute gas at said price to the residents of the city
19 of Chicago and make therefrom a reasonable profit upon the amounts invested by your orator in its business of manufacturing, selling and distributing gas; that the enforcement of said rate would bring ruin and detruction to your orator financially and would force your orator into insolvency.

Your orator further shows that the enforcement thereof would cause your orator the loss of many millions of dollars; that the exact amount which your orator would lose from its enforcement your orator is unable to state, but that it is largely in excess of two thousand dollars.

Your orator further shows that the enforcement of said ordinance would amount to a confiscation of your orator's property in violation of the Constitution and laws of the United States, and of all amendments thereto.

Your orator further respectfully submits unto the court that in the opinion of your orator no power was, by the legislature of the State of Illinois, or now is, conferred upon the city of Chicago, to regulate the price of gas sold and distributed by your orator in the city of Chicago, except as it is provided in said charter, as hereinabove set forth, and your orator therefore charges the fact to be that the city of Chicago has not the power to compel your orator to charge less for the gas sold and distributed by it than three dollars per thousand cubic feet, and that the said ordinance is, in all respects, null and void. Nevertheless, your orator shows unto the court, as hereinbefore set forth, that the city of Chicago intends to and will enforce the provisions of said ordinance, in the event the enforcement thereof is not prohibited by the order of this honorable court

Forasmuch, therefore, as your orator is without remedy save in a court of equity, where such matters are properly cognizable your orator prays that the City of Chicago and the citizens thereof, who are hereby made parties defendant to this bill, may be required to make full and direct answer to the same, to the next return
20 day of this court, but not under oath, answer under oath being expressly waived, that on the filing of this bill of complaint the usual writ of injunction may issue forthwith against the City of Chicago, restraining and enjoining its mayor, its chief of police, city attorney, corporation counsel, agents, servants and employees, and all and singular its other executive officers, and each every and all of the citizens of Chicago, from in any way enforcing or attempting to enforce said ordinance entitled "An ordinance regulating and fixing the price of gas in the city of Chicago," or any of the provisions thereof, against your orator, or from in any way interfering with your orator or with said property or business, by reason of anything in said ordinance contained, until the further order of the court herein, and that upon the final hearing hereof the said ordinance so passed by the common council of the city of Chicago, on the fifteenth day of October, 1900, may be adjudged and declared to be invalid, illegal, null and void and of no further force and effect, and that the said City of Chicago, its mayor, chief of police, city attorney, corporation counsel, agents, servants, and employees, and all and singular its other executive officers and each, every and all of the citizens of Chicago, may be permanently enjoined and restrained from enforcing or attempting to enforce, the same or any of the provisions thereof, against your orator, or from in any way interferring with your orator, its property or business, by reason of anything in said ordinance contained, and that in serving the said City of Chicago and the mayor thereof it may be decreed by this honorable court that the service thereon of said writ of injunction and of such summons as may be sued out herein shall be held by this honorable court to have been service not only upon said City of Chicago, and the mayor thereof, but also upon each, every and all of the citizens of said city, and that your orator may have such other and further relief in the premises as equity may require and to your
21 honors may seem fit; and may it please your honors to grant the usual summons in chancery, directed to the defendant, The City of Chicago, and to the citizens thereof, directing it and them, and each, every and all of them, to be and appear before this honorable court, on the next return day thereof, then and there to answer this bill of complaint.

And this your orator will ever pray.

THE PEOPLE'S GAS LIGHT &
COKE COMPANY,
By C. K. WOOSTER,
Its Vice-President.

WINSTON & MEAGHER, *Of Counsel.*

STATE OF ILLINOIS, } ss.:
County of Cook, }

C. K. Wooster, being duly sworn, on oath deposes and says that he is one of the vice-presidents of The People's Gas Light and Coke Company; that he has read the foregoing bill of complaint and knows the contents thereof, and the matters and things therein set forth. And affiant further says that said bill of complaint, and the matters and things therein set forth, and the charges and allegations therein made, and each and every of them, are true of affiant's own knowledge.

C. K. WOOSTER.

Subscribed and sworn to before me this 31st day of December, A. D. 1900.

[SEAL.] JAMES T. MAHER,
Notary Public.

(Endorsed:) Filed Dec. 31, 1900. S. W. Burnham, clerk.

22 And on to wit: the 31st day of December, 1900, there issued out of the clerk's office of said court in said entitled cause a certain chancery subpœna, which subpœna together with the memorandum thereto attached and the marshal's return thereon endorsed is in the words and figures following to wit:

23 Form No. 186.

UNITED STATES OF AMERICA, } ss.:
Northern District of Illinois, Northern Division, }

The United States of America to City of Chicago, Greeting:

We command you and every of you, that you appear before our judges of our circuit court of the United States of America, for the northern district of Illinois, at Chicago, in the northern division of said district, on the first Monday in the month of February, next, to answer the bill of complaint of People's Gas Light & Coke Company, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this 31st day of December in the year of our Lord one thousand nine hundred, and of our Independence the 125th year.

[SEAL.] S. W. BURNHAM, *Clerk.*

Memorandum.

The above-named defendant is notified that unless it shall enter its appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the

complainant's bill will be taken against it as confessed, and a decree entered accordingly.

S. W. BURNHAM, *Clerk.*

24 [Endorsed:] Marshal's No. —. General No. —. Circuit court United States northern district of Illinois northern division. —— —— *vs.* —— ——. Chancery subpœna. Returnable to rule day, first Monday in —— A. D. 190–. —— —— clerk. —— —— complainant's solicitor.

Circuit Court of the United States of America, Northern District of Illinois, *ss.*

—— ——
vs. } In Chancery.
—— ——.

To —— ——:

Take notice that the complainant will move this honorable court, on the — day of —— A. D. 190– or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within and above named defendant in accordance with the prayer of the bill therein.

Yours, etc.,

—— ——,
Compl't's Solicitor.

Dated this — day of —— A. D. 190–.

25 *Marshal's Return.*

I have served this writ within my district, upon the City of Chicago, a municipality by delivering a true copy thereof to William Loeffler, city clerk of the said city, on the 31st day of December, A. D. 1900.

I was unable to find the mayor of the said city within my district.

JOHN C. AMES,
U. S. Marshal.
WM. E. CASS, *Deputy.*

(Endorsed:) Filed Jan. 3, 1901. S. W. Burnham, clerk.

26 And on to wit: the second day of January, 1901, being one of the days of the regular December term of said court, 1900, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to wit:

Order of January 2, 1901.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
THE CITY OF CHICAGO. } 25780.

This day this cause coming on to be heard upon the verified bill of complaint heretofore filed herein by the People's Gas Light and Coke Company, and upon the motion of said complainant for a restraining order, as prayed for in said bill of complaint, due notice of said motion having been served upon the City of Chicago, and said City of Chicago being now in court by its corporation counsel, upon the stipulation and undertaking of the corporation counsel of the city of Chicago here made in open court that the City of Chicago, its mayor, its city attorney, its corporation counsel, and each of them and each, every and all of the officers, agents, servants and employees of the city of Chicago, will not do, nor permit to be done, any of the matters and things which by the prayer of said bill of complaint the defendant is sought to be restrained therefrom and against, until the final hearing and determination of said motion for an injunction, the motion for a temporary restraining order against said City of Chicago is continued upon said stipulation and undertaking of the corporation counsel until the final determination of said motion for an injunction.

27 And, on motion of the complainant,

It is ordered by the court that, if at any time hereafter any resident or residents, citizen or citizens of the city of Chicago shall enforce, or attempt to enforce, the ordinance passed by the city council of the city of Chicago on October 15th, 1900, entitled "An ordinance regulating and fixing the price of gas in the city of Chicago," or begin any prosecution thereunder, or take any steps or other proceedings thereunder, the complainant shall have leave to forthwith make such resident- or citizens parties defendant to said bill, and that said parties, and each of them, shall thereupon be forthwith enjoined and restrained, as prayed for in and by the bill of complaint filed in said cause.

28 And on to wit: the third day of January, 1902, came the City of Chicago by Granville W. Browning and Charles M. Walker, corporation counsel and filed in the clerk's office of said court in said entitled cause its certain demurrer in words and figures following to wit:

Demurrer of City of Chicago.

UNITED STATES OF AMERICA, } ss:
State of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

PEOPLE'S GAS LIGHT & COKE COMPANY }
vs. } Number 25780.
CITY OF CHICAGO. }

The demurrer of The City of Chicago, def't, to the bill of complaint of The People's Gas Light & Coke Company, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs to said bill and for cause of demurrer shows that the complainant has not in and by its said bill, made or stated such a case as entitles it in a court of equity to any discovery or relief from or against this defendant, touching the matters contained in the said bill, or any of such matters.

29 Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant demurs to the said bill and to all the matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill; and it prays to be dismissed with its reasonable costs in this behalf sustained.

THE CITY OF CHICAGO,
By GRANVILLE W. BROWNING,
Solicitor for Defendant.

CHARLES M. WALKER,
Corporation Counsel, of Counsel.

I certify that in my opinion the foregoing demurrer of The City of Chicago, defendant, to the bill of complaint of The People's Gas Light & Coke Company, complainant, is well founded in law and proper to be filed in the above cause.

GRANVILLE W. BROWNING,
Solicitor for Defendant.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Granville W. Browning on oath states that he is the solicitor of the city of Chicago, and that he has heard read the foregoing demurrer to the bill of complaint of the People's Gas Light & Coke Company, in this suit, and that the same is not interposed for the purpose of delaying said suit, or any proceeding therein.

GRANVILLE W. BROWNING.

Subscribed and sworn to before me, this 3 day of January, A. D. 1902.

[SEAL.] S. W. BURNHAM, *Clerk.*

(Endorsed:) Filed Jan'y 3, 1902. S. W. Burnham, clerk.

30 And on to wit: the third day of January, 1902, being one of the days of the regular December term of said court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to wit:

Order of January 3, 1902, *Giving Leave to File Amendment to the Bill.*

PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
CITY OF CHICAGO. } 25780.

Now come the parties by their solicitors.

Upon motion, leave is hereby granted the complainant to file an amendment to the bill of complaint instanter, the demurrer heretofore filed by defendant to the bill to stand to the bill as amended.

Now comes on to be heard the demurrer to said amended bill, the court after hearing the arguments of counsel in full, takes the matter under advisement.

31 And on to wit: the third day of January, 1902, came the complainant in said entitled cause by its solicitor and by leave of court first had and obtained filed in the clerk's office of said court in said cause a certain amendment to the bill of complaint in words and figures following to wit:

Amendment to Bill.

In the Circuit Court of the United States of America for the Northern District of the State of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
CITY OF CHICAGO.

Now comes the complainant herein, leave of court being first had and obtained, and amends the original bill of complaint heretofore filed herein by the said complainant, by inserting after the word "thereof," in the third line from the bottom of the thirteenth page of said bill of complaint, and before the word "your," in the second line from the bottom of said thirteenth page of said bill, the following, to wit:

"Your orator further shows unto your honors that, in the business "of manufacturing, selling and distributing gas in the city of Chi- "cago, your orator sells and delivers, as hereinabove set forth, gas to "over three hundred thousand (300,000) customers. That many of "said three hundred thousand customers are people of small means,

"and are financially irresponsible. That your orator renders to "each of its customers monthly statements for the gas consumed by "each of such customers during the preceding month, and collects "therefor within a short time thereafter; that unless said bills are "promptly paid your orator, as is its right and privilege, discon- "tinues the supply of gas to such consumers and that this is the only "method by which your orator is enabled to avoid great loss, by "reason of the failure or inability of your orator's customers and "consumers to pay the bills for the gas consumed by them, as afore- "said.

"Your orator further shows unto your honors that if the city of "Chicago should be permitted to begin prosecutions against your "orator for the failure of your orator to comply with the terms of "the ordinance aforesaid, that thereupon a large number of the cus- "tomers and consumers of your orator would decline to pay your "orator the price fixed by it, as aforesaid, and would refuse to pay "any sum or sums whatsoever to your orator, over and above the "sum fixed by the city of Chicago in the ordinance aforesaid.

"And your orator shows unto your honors that if your orator "should attempt to renew the meters in the houses of such cus- "tomers, or should attempt to discontinue the supply of gas to such "customers, your orator would be immediately subjected to addi- "tional prosecutions and arrests, on the part of the city of Chi- "cago.

32 "Your orator further shows that if, on the other hand, "your orator should permit the bills of such customers to run "until the final determination of such suit, or suits as the city of "Chicago might bring against it, for failure on the part of your "orator to comply with the terms of the ordinance aforesaid, the "outstanding bills of your orator would aggregate an enormous "amount, which your orator is at present unable to calculate, and "which it is impossible to calculate by any means whatsoever. "And your orator shows that by means thereof, and by reason of "the financial irresponsibility of a large number of your orator's "customers and consumers, your orator would be unable, in the "event it was finally successful in defeating the prosecution or prose- "cutions brought against it by the city of Chicago, to collect from "such customers and consumers the amount of such outstanding "indebtedness; and thereby your orator shows unto your honors "that your orator would suffer an enormous loss, the exact amount "of which your orator is unable to calculate, and which your orator "shows unto your honors it is impossible to calculate, in any respect "whatsoever, but which, in the opinion of your orator, would amount "to many hundreds of thousands of dollars; wherefore, your orator "shows unto your honors that the damage to your orator would be "irreparable and incalculable."

THE PEOPLE'S GAS LIGHT AND COKE COMPANY,
By C. K. WOOSTER, *Vice-Pres't.*
MEAGHER & WHITNEY, *Its Solicitors.*

JAMES F. MEAGHER, *Of Counsel.*

STATE OF ILLINOIS, } ss:
County of Cook, }

C. K. Wooster, being first duly sworn, on oath deposes and says that he is the vice-president of the People's Gas Light and Coke Company; that he has read the foregoing amendment to the bill of complaint heretofore filed by the People's Gas Light and Coke Company in the above-entitled cause; that he knows the contents of the said amendment, and the matters and things therein set forth. Affiant further says that the said amendment to the said bill of complaint and the matters and things therein set forth, and the charges and allegations therein made, and each and every of them, are true, of affiant's own knowledge.

C. K. WOOSTER.

Subscribed and sworn to before me this 3rd day of January A. D. 1902.

[SEAL.] JOSEPH R. MORRIS,
Notary Public.

(Endorsed:) Filed Jan'y 3, 1902. S. W. Burnham, clerk.

33 And on to wit: the 15th day of January, 1902, there was filed in the clerk's office of said court in said entitled cause a certain opinion in words and figures following to wit:

Opinion.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

PEOPLE'S GAS LIGHT & COKE COMPANY, Complainant,
vs.
CITY OF CHICAGO ET AL., Defendant-.

The bill is to restrain the city of Chicago from putting in force an ordinance passed October 15, 1900, providing that corporations, companies or persons manufacturing, selling or distributing gas in the city of Chicago for illuminating or fuel purposes shall not charge individual consumers more than seventy-five cents per thousand cubic feet, provided the same is paid within ten days from the rendering of the bill, or eighty-five cents per thousand if payment is postponed. The ordinance provides penalties against the company, corporation or person violating its provisions. It is a general ordinance, relating to all manufacturers and distributors of gas in the city, and applicable to the complainant only because complainant happens to be such a manufacturer and distributor of gas in the city.

The bill, in substance, avers that the complainant is now furnishing such gas at the net rate of one dollar per thousand cubic feet, and that the enforcement of the ordinance in question, compelling a reduction, would be in violation of the contract embodied in the

charter of complainant under which its plant was installed and expanded and, therefore, in contravention of the first paragraph
34 of section 10, article 1, of the Constitution of the United States, providing that no State shall pass any law impairing the obligation of contracts; also that its enforcement would be in violation of the fifth amendment to the Constitution, providing that no person shall be deprived of life, liberty or property without due process of law; also in violation of the fourteenth amendment to the Constitution, providing that no State shall deprive any person of life, liberty or property without due process of law, or deny to any person the equal protection of the laws. Unless, however, the complainant's charter constitutes a contract, it is difficult to see how the ordinance would result in depriving the complainant of its property without due process of law, or be a denial to complainant of the equal protection of the laws. The whole case, therefore, in its constitutional aspect, turns upon the question whether the ordinance violates any contract right of complainant as embodied in its charter.

The complainant's charter was by special act of the legislature, approved February 12, 1855, creating it a corporation with the usual powers and liabilities, with a capital stock not to exceed five hundred thousand dollars, and providing in section 4 that the company should furnish to the city of Chicago, for its public uses, gas at a rate not exceeding two dollars per thousand, and to the inhabitants of said city at a rate not exceeding two dollars and fifty cents per thousand.

February 7, 1865, this act was amended, allowing an indefinite increase of capital stock; repealing expressly the 4th section relating to the limit upon price, and providing that "ten years after the passage of the act the common council of the city of Chicago may by resolution or ordinance regulate the price charged by said company for gas, but said common council of the city of Chicago shall in no case be authorized to compel the said company to furnish gas at a less rate than three dollars per thousand feet."

The contention of complainant is that no matter what may now be the general power of the city in the way of regulating the price of gas, under the constitution of 1870, and the corporation acts coming into force thereafter, the city may not, without impairing the obligation of complainant's contract, fix for complainant, a price
35 at less than three dollars per thousand feet; and the decree invoked is to maintain this supposed constitutional right of inviolability of contract.

The city contends that in the absence of a clear provision in the charter in maintenance of complainant's contention, the general right of cities to regulate the price of gas is applicable to complainant, as well as to other manufacturers or distributors, and that the clause in question embodies no such clear prohibition or limitation as to interfere with the city's general right of regulation of rates. It is insisted that the clause was intended, not as a limitation upon the powers of the city, but as a restriction laid upon the legislature itself in respect of future legislation on the subject involved.

The interpretation of the clause is not free from considerable difficulty. It is not easy to see why the legislature should have intended it as a restriction upon itself or its successors; for, however, precisely or *emphatically* such attempted restriction may have been formulated, it would have been an empty phrase when the succeeding legislature came into existence. Nor is it easy to see how the legislature intended that the prices of 1865, measured by the then depreciated dollar standard, should be made perpetual in favor of complainant, in face of the certainty that the legal-tender dollar would some time rise to its true value, and that, in the course of events, the cost of manufacturing gas would decrease. But in view of the conclusion to which I have come, it is needless to pivot this case upon the interpretation to be put upon this clause.

The Supreme Court of the United States in *Freeport Water Company vs. Freeport City* 180 *U. S.* 587 ruled that under the Illinois constitution of 1870, and the subsequent acts, relating to municipalities and the incorporation of companies, there is reserved in the State the power to prescribe in the government of corporations such regulations as it may deem advisable; and that such right of regulation extends to the fixing, from time to time, of reasonable water rates, unless, possibly (and on this the court refrains from ruling) there be an explicit limitation to the contrary in the ordinance or contract under which the works are installed. It is clear, in the application of this decision to the case under consideration, that, as between the State and any gas companies organized under the constitution of 1870,
36 and the act of the legislature in pursuance thereof, under ordinances, containing no explicit contract relating to minimum rates, there is a reserved power in the State to regulate, within reasonable limits, the rates from time to time. Whether such power has been delegated to the city is an inquiry, that, for reasons stated later, I need not enter upon. In considering the phase of the case I now approach, it is a matter of indifference whether the general power of regulation be in the General Assembly, or in the city as an agent of the State. It is sufficient to the argument that it is lodged somewhere in the instrumentalities of the State.

It was disclosed at argument in answer to inquiries of the court, though not set forth in the bill—that the complainant originally manufactnred and distributed gas upon the west side only, and that its south side and north side system was acquired through merger or purchase of other gas companies under the consolidation act of 1897.

Two of these companies, the Equitable Gas Company and the Consumers' Company, were organized under the constitution of 1870 and the acts in pursuance thereof. The Chicago Gas Light & Coke Company was organized under a special act of February 12, 1849, amended February 9, 1855; but contains no restriction upon the right of the General Assembly, or the city, to regulate from time to time the prices of gas; nor, so far as disclosed, is there in any ordi-

nance or contract between these companies and the city any restriction upon its general right of regulation from time to time.

The act under which the merger of the companies took place, approved June 5, 1897, provides that gas companies organized in Illinois are authorized and empowered to sell, transfer, convey or lease their real and personal property, rights, franchises and privileges, in whole or in part, to any other gas company doing business in the same city, and that such other gas company is authorized to purchase, lease hold and enjoy such property; also, that gas companies doing business in the same city, town or village may lawfully consolidate and merge into a single corporation (to be one of the merging companies) by complying with a certain proceedure therein specified. A further section of the act provides that the consolidated corporation thus organized shall be subject to the legal obligations now resting upon each of the companies so merged, respect-
37 ively, under their several charters and ordinances, in the same manner and to the same extent as if the companies had remained individual and distinct—none of said companies being in contemplation of the act extinguished.

In answer to an inquiry of the court at argument, counsel for the complainant contended that the merger of the other gas companies with the complainant was the equivalent of the complainant's extension, by original installation, of its works, and pipes into the field occupied by the other companies. Were this so, the supposed restriction contained in the charter of 1855 would follow the merger and extend to the entire system now operated by the consolidated company.

But a little reflection shows this position unsound. The act of 1855 authorizes complainant to erect its works and lay its pipes in the streets and alleys of the city, subject to the consent of the city council. In the absence of consent, no pipes could be laid. It is possible that the city may not, in mere arbitrariness, withhold its consent, where the consent asked for was in the ordinary development of the complainant's plant; but absence of consent, founded on refusal to extend the field for the application of complainant's three-dollar minimum rate, would not be arbitrary. The city council was, therefore, from the organization of the complainant company, in contemplation of complainant's charter, a necessary party to any substantial extension of its plant, carrying the charter restriction as to regulation of rates. No consent of the city has been given to the merger, and therefore, no consent has been given to the enlargement of complainant's franchise, as affected by the limitation in the charter of 1855 relied upon. I do not see how the complainant can, in the absence of such consent, carry over to the territory acquired under the merger its supposed charter exemption from regulation of price. A contrary holding would enlarge the subject-matter of this exemption without the consent of the city—a result that the act of 1855 does not contemplate, but clearly negatives.

The terms of the merger act of 1897, reinforce this conclusion. It specifically provides, as already stated, that the consolidated corpo-

ration shall be subject to the legal obligations now resting upon each of the companies absorbed. One of these obligations is (in the absence of a contrary contract provision) to submit to the
38 State's right of reasonably regulating the price of gas from time to time. In this respect, the consolidated company stands precisely where each of the merged companies stood, and, as we have seen, neither of these was exempt from the State's general right of regulation. In respect to the system acquired through the merger, therefore, the complainant has no contract of exemption under the charter of 1855.

It is obvious then from what has been stated, as against the State's power to reasonably regulate rates from time to time, the complainant, to the extent, at least, that it is successor to the merged companies, enjoys no exemption from regulation. But it is urged that the powers of the General Assembly in this respect are not delegated to the city, and, therefore, however, this reasoning might apply to the powers of the General Assembly, it is inapplicable to any claim of such power upon the part of the city.

I refrain at this time from entering into so far-reaching a question—a question involving the policy of the State respecting the custody of some of its greatest powers. The question thus raised growing out of the interpretation of State statutes, is one primarily belonging to the State courts. My jurisdiction of the case under consideration does not extend to that question, unless its decision, one way or the other, is a necessary predicate to the constitutional question involved. I do not see that it is. If I hold that, under existing legislation, the city has not been delegated with the State's power to regulate rates, it is manifest that the real and adequate reason for annulling the ordinance complained of would be, not any provision of the Federal Constitution, but this lack of power, as shown in the State legislation. On the other hand, if I should hold that the State's power had been delegated to the city, then, according to the reasoning already stated, the injunction prayed for would be refused. Whichever way one looks at this phase of the case, it turns, not on Federal constitutional law, but upon the interpretation of the State statutes, and, is not, therefore, within the meaning of the judiciary act, a case involving the construction of the laws or the Constitution of the United States. If complainant's substantial remedy against the ordinance complained of is lack of power in the city, its relief must be found in the State courts.

Whether, by the merger, the complainant has lost its right
39 to exemption from regulation, to the extent that the consent was given to the installation of its original system, it is not necessary to decide, for the bill asks for no divisional relief. Nor is it necessary to consider the reasonableness of a seventy-five-cent rate, as provided in the ordinance, for no facts challenging the ordinance as unreasonable are set forth in the bill.

I realize that this case is one of great importance, both to the city and to the gas company, and that it may finally be brought under the review of the Supreme Court, and have, therefore, considered it upon a larger survey of the facts than the pleadings before me justify.

I suggest that the bill be amended to bring in these facts, or that the demurrer be withdrawn and an answer filed, bringing them in, reserving the right of demurrer to the bill as it now stands. If the facts thus disclosed are as I apprehend them, an order will then be entered in accordance with the conclusions of the law already stated.

P. S. GROSSCUP,
Circuit Judge.

(Endorsed:) Filed Jan. 15, 1902. S. W. Burnham, clerk.

40 And on to wit: the 6th day of June, 1902, being one of the days of the regular December term of said court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to wit:

Order of June 6, 1902, Giving Leave to Amend Bill.

THE PEOPLE'S GAS LIGHT & COKE COMPANY
vs.
CITY OF CHICAGO ET AL. } 25780.

Now come the parties by their solicitors, and the complainant has leave to file its amended bill herein *nunc pro tunc* as of January 15, 1902 and the defendant has leave to file its demurrer to said amended bill *instanter*, and now comes on for argument the demurrer to said amended bill, and the court having heard the same to conclusion and not being sufficiently advised in the premises, takes the same under advisement, with leave to counsel to supplement their oral arguments by briefs to be filed by the last of next week.

41 And on to wit: the fifth day of June, 1902, came the complainant in said entitled cause by its solicitors, and by leave of court first had and obtained filed in the clerk's office of said court its certain amended bill in words and figures following to wit:

42 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
THE CITY OF CHICAGO.

Amended Bill in Equity.

Sears, Meagher & Whitney, solicitors for complainant.
John W. Griggs, W. F. Sheehan, James F. Meagher, Thomas A. Moran, of counsel.

43 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

I.

To the honorable the judges of said circuit court:

And now comes the complainant, The People's Gas Light and Coke Company, and by leave of court first had and obtained files this its amended bill of complaint. And thereupon, humbly complaining, showeth unto your honors your orator, The People's Gas Light and Coke Company, that it is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and that it is and has been engaged in the manufacture, sale and distribution of gas in the city of Chicago for many years last past; that its principal place of business is in the city of Chicago; that it is a citizen of the State of Illinois and a resident and inhabitant of the northern division of the northern district of said State. That the city of Chicago is a municipal corporation organized and existing by virtue of the laws of the State of Illinois, and is a citizen and inhabitant of the northern division of the northern district of said State.

44 II.

Your orator further shows that your orator was organized as a corporation to do business in said State under and by virtue of a special statute of the State of Illinois, approved February 12, 1855, entitled "An act to incorporate the People's Gas Light & Coke Company," as amended by an act entitled "An act to amend an act entitled 'An act to incorporate the People's Gas Light and Coke Company,' approved February 12, 1855," which said amendatory act was approved February 7, 1865. That said act of the legislature entitled "An act to incorporate the People's Gas Light and Coke Company" approved February 12, 1855, is in the words and figures following, that is to say:

"An act to incorporate the People's Gas Light and Coke Company.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That Matthew Laflin, L. C. Paine Freer, A. G. Throop, D. A. Gage, Jno. S. Wallace, Geo. W. Snow, H. B. Bay, and R. H. Foss and their associates be and they are hereby created a body politic and corporate, with perpetual succession, by the name and style of "The People's Gas Light and Coke Company," and by that name they and their successors shall be capable in law of contracting and being contracted with, suing and being sued, defending and being defended in all courts and places and in all matters and places whatsoever, with full powers to acquire, hold, occupy and enjoy all such real and personal estate as may be necessary and proper for the construction, extension and usefulness of the works

of said company, and for the management and good government of the same; and they may have a common seal, and the same may alter, break and renew at pleasure.

SEC. 2. The corporation hereby created shall have full power and authority, forthwith upon their due organization under this act, to proceed to the erection of the necessary works for the manu-
45 facture of gas and coke, within said city of Chicago and on and after the 12th day of February, A. D. 1859, to manufacture and sell gas, to be made from any or all the substances or a combination thereof, from which inflammable gas is usually obtained, and to be used for the purpose of lighting the city of Chicago or the streets thereof and any buildings, manufactories, public places or houses therein contained, and to erect all necessary works and apparatus as aforesaid; and on and after the said 12th day of February, 1859, or sooner by and with the consent of the Chicago Gas Light and Coke Company, to lay pipes for the purpose of conducting the gas in any of the streets or avenues of said city, with consent of the city council: *Provided*, That no permanent injury or damage shall be done to any street, lane or highway in said city. The real estate which this corporation is entitled to hold shall not exceed in value $100,000.

SEC. 3. The capital stock of said company shall not exceed $500,000, to be subscribed for and paid in such proportions as shall be prescribed by the by-laws and rules for regulating the concerns of said company as they shall think proper and necessary respecting the management and disposition of the stock, property and estate of said company, the duties of the officers and agents to be employed, the number and election of directors, and all such matters as appertain to the concerns of said company.

SEC. 4. It is an express provision of the foregoing act of incorporation that the said company shall furnish and supply to the city of Chicago, for all its public uses, at the election of the proper authorities of said city, a sufficient supply of gas, at a rate not exceeding $2 per thousand feet; and the inhabitants of said city, at a rate not exceeding $2.50 per thousand feet."

Approved February 12, 1855.

III.

Your orator further shows that the act approved February 7, 1865, entitled "An act to amend an act entitled 'An act to incorporate the People's Gas Light and Coke Company,' approved February 12, 1855," is in the words and figures following, to wit:

46 "An act to amend an act entitled 'An act to incorporate the People's Gas Light and Coke Company,' approved February 12, 1855.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That the second section of said act be and the same is hereby so amended as to read as follows, viz: The corporation hereby created shall have full power and authority forthwith

to proceed to the erection and maintenance of the necessary works for the manufacture of gas and coke within said city of Chicago, and to manufacture, supply and sell gas, to be made from any and all substances or a combination thereof, from which inflammable gas is usually obtained, and to be used for the purpose of lighting the city of Chicago, any streets, buildings, manufactories, public places or houses therein contained, and to erect and use all necessary works and apparatus for such purposes aforesaid, and with the consent of the common council of said city, to lay down and use all necessary pipes for the conducting of gas in and along any of the streets, alleys, avenues or public squares of said city: *Provided*, That no permanent injury or damage shall be done to any such street, alley, avenue or public square by the laying down of any such pipes.

SEC. 2. That section three of the said act be and the same is hereby so amended as to read as follows, viz: The capital stock of said company shall be five hundred thousand dollars, and may be increased from time to time, at the pleasure of said corporation; it may be divided into such shares, subscribed for, paid and transferred in such proportions and manner as shall be prescribed by the by-laws and regulations of said company.

SEC. 3. All the corporate powers of said corporation shall be vested in and exercised by a board of directors, and such officers and agents as said board shall appoint. The board of directors shall consist of not less than three nor more than five stockholders, who shall be chosen by the stockholders at such time and in such manner as the said corporation shall by its by-laws prescribe, and shall hold their office until their successors are elected and qualified, and may fill any vacancies which may happen in the board of directors by death, resignation or otherwise; they may adopt such by-laws, rules and regulations for the government of said corporation and the
47 management of its affairs and business as they may think proper, not inconsistent with the laws of this State, and the fourth section of said act is hereby repealed; but ten years after the passage of this act the common council of the city of Chicago may, by resolution or ordinance, regulate the prices charged by said company for gas; but said common council of the city of Chicago shall in no case be authorized to compel the said company to furnish gas at a less rate than three dollars per thousand feet.

SEC. 4. The said corporation is hereby authorized to borrow money and to mortgage or lease any of its property or franchises.

SEC. 5. This act shall be deemed a public act, and noticed as such by all courts without pleading, and take affect from and after its passage."

Approved February 7, 1865.

IV.

Your orator further shows that after the passage of said act, approved February 12, 1855, as amended by the act approved February 7, 1865, as herebefore set forth, your orator did act upon the privileges and powers therein granted, and did accept the same, and did construct and erect gas works in the city of Chicago, and did

with the consent of said city of Chicago, lay pipes for the distribution and delivery of gas to consumers thereof in said city of Chicago. That the consent of the city of Chicago was expressed in and by a certain ordinance passed and adopted by the common council of the city of Chicago on April 30, 1858, in the words and figures following, to wit:

An ordinance concerning the People's Gas Light and Coke Company. (Passed August 30, 1858.)

"*Be it ordained by the common council of the city of Chicago:*

SECTION 1. That permission and authority be, and the same are hereby granted to the People's Gas Light and Coke Com-
48 pany, of the city of Chicago, and State of Illinois, to lay their gas mains, pipes, feeders and service pipes in any of the streets, avenues, highways, public parks or squares throughout said city subject at all times, however, to the resolutions and ordinances of the common council of said city; *provided*, that said company when they shall open the ground to lay any pipe, or for any other purposes whatever, they shall restore the streets, pavements and sidewalks to a condition satisfactory to the city superintendent, with all convenient dispatch, and no more of any street or alley shall be opened or encumbered at any one time or in any one place, nor shall any street or alley be suffered to remain open or encumbered for a longer period than shall be strictly necessary to enable said company to proceed with their work; and said company shall be liable for all damages which may result from, or by reason of, opening or encumbering any street, alley or sidewalk in said city of Chicago, and *provided further*, that whenever said company shall desire to lay their pipe, or do other work in any of the principal streets of said city, before they commence doing so they shall consult the mayor or city superintendent of public works, and unless the mayor or superintendent consent to such work being done at the particular time, they shall not proceed with such work on any such principal street, without the express permission of the common council of the said city of Chicago; and *provided, further*, that nothing herein contained shall be construed to conflict with any rights or privileges heretofore given by the common council to the Chicago Gas Light and Coke Company, or in conflict with the provisions contained in the act of incorporation of the People's Gas Light and Coke Company, to first obtain the consent of the Chicago Gas Light and Coke Company, if pipes are laid previous to February 12, A. D. 1859."

V.

Your orator further shows that, in acting on the privileges and powers granted to and accepted by your orator in and by said charter, and in carrying out and performing the duties and obligations upon your orator imposed by said charter, your orator has
49 invested many millions of dollars in erecting and constructing gas works, plants and appliances, and in laying down pipes, mains, feeders and appurtenances, to enable your orator successfully to carry on the business of manufacturing and delivering

gas to consumers thereof throughout the city of Chicago, and thereby the said charter granted to the People's Gas Light and Coke Company, approved February 12, 1855, as amended by said act approved February 7, 1865, has become, and now is, a contract by and between your orator and the people of the State of Illinois; and your orator further shows that from and after the enactment of said act approved February 12, 1855, as amended by the act approved February 7, 1865, your orator did continuously, thence hitherto, remain in, and engage in, the business of manufacturing gas, and of selling and distributing said gas by means of mains, pipes, feeders and appliances laid in the streets of the said city of Chicago, and that your orator is now engaged in the business of manufacturing, selling and distributing gas in the city of Chicago, and that said contract by and between your orator and the people of the State of Illinois is a contract in full force and effect, and has not been repealed, annulled, cancelled, amended or otherwise prejudiced.

VI.

Your orator further shows that by said charter your orator is created a body politic and corporate, capable of contracting and being contracted with, and by said charter is granted full power and authority to erect and maintain the necessary works for the manufacture of gas within the said city of Chicago, and to manufacture, supply and sell gas to be made from any and all substances, or a combination thereof, from which illuminating gas is usually obtained, to be used for the purpose of lighting the city of Chicago and any streets, buildings, manufactories, public places or houses therein contained, and to erect and use all necessary works and apparatus for such purposes aforesaid, and, with the consent of the common council of said city, to lay down and use all necessary pipes for the conducting of gas in and along any and all of the streets, alleys, avenues or public squares of said city, with full power to acquire, hold, occupy and enjoy all such real and personal estate as may be necessary and proper for the construction, extension and usefulness of the works of your orator, and for the management and good government of the same. That by virtue of said act of February 12, 1855, as amended by said act approved February 7, 1865, and the consent of the city of Chicago, as contained in said ordinance passed August 30, 1858, your orator was granted, with other powers, the power and authority to maintain and use and operate gas mains, pipes, feeders, service pipes and appliances and appurtenances in all of the streets, alleys, avenues, highways or public squares throughout the city of Chicago, at any time within the corporate limits of said city of Chicago, for the purpose of supplying gas to the residents thereof, consumers within said city of Chicago.

VII.

Your orator further shows that, relying upon the contract embraced in its charter, your orator has invested its capital and funds in the development of its business in the city of Chicago, and on the

date of the filing of this bill of complaint your orator owns real estate in the city of Chicago to the value of upwards of two millions of dollars; that it owns personal property in the city of Chicago to the value of upwards of ten millions of dollars; that it has many buildings, factories, retorts, plants and apparatus for the manufacture, sale and distribution of gas in the city of Chicago, and in all
51 parts and divisions thereof, and that it has upwards of seventeen hundred miles of pipes and mains laid in the streets, alleys and avenues, highways and public squares of said city, and that it is now engaged in the operation of the plants, pipes, mains and apparatus aforesaid, and in the distribution of gas through said pipes, mains, feeders and appliances to the city of Chicago, and to the citizens thereof, consumers of said gas.

VIII.

Your orator further shows that for some years prior to the passage of the amendment of February 7, 1865, of your orator's charter, hereinbefore set forth, and at the time of the passage of said amendment, and for several years thereafter, the rate charged by your orator for gas to consumers thereof in the city of Chicago, was the gross rate of $4.25, and the net rate of $3.75, per thousand cubic feet, and that by virtue of the said charter to your orator, and under which your orator has ever since been and is now conducting and carrying on its business and affairs, your orator was given full authority touching the management of its business and affairs, and full authority to fix such rates as your orator might deem reasonable, best or proper to charge for the gas sold and delivered by your orator to the consumers of said gas, customers of your orator, and that while in and by said act, approved February 7, 1865, it was provided that ten years after the passage of said act, the common council of the city of Chicago might by resolution or ordinance regulate the prices charged by your orator for gas, yet it was expressly provided in said act that the said common council of the city of Chicago should in no case be authorized to compel your orator to furnish gas at a less rate than $3 per thousand cubic feet.

And your orator charges that by said charter, and the ac-
52 ceptance thereof as aforesaid, by your orator, a contract was created between your orator and the people of the State of Illinois, by which it was provided and agreed, among other things, that the common council of the city of Chicago should never be authorized to regulate the rates charged by your orator for its gas so as to compel your orator to furnish gas at a less rate than $3 per thousand feet;

And your orator shows that pursuant to the powers and privileges granted by the terms of its charter, as hereinbefore set forth, your orator has from time to time fixed the rates charged by your orator for gas, sold by it in the city of Chicago, at such rates and prices as in the judgment of your orator it deemed proper to charge; and that your orator has from time to time decreased said rates, and that the price now and for some years last past charged by your orator for illuminating gas manufactured and sold by it in the city

of Chicago to the residents thereof and to the city of Chicago is the net rate of $1 per thousand cubic feet, and that the reductions from time to time made by your orator from the higher rates charged by your orator prior to and at the time of the passage of the said act of February 7, 1865, and for some years subsequent thereto, to the net rate of $1 per thousand cubic feet, have been made of your orator's own free will and voluntary act, and that said reduction in rates from time to time has not been by reason of any ordinance of the city of Chicago compelling or attempting to compel your orator to make any reduction or reductions in the price charged by your orator for the gas sold and delivered by it, in the city of Chicago, to the residents thereof and to the city of Chicago.

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IX.

And your orator here shows that the city of Chicago itself is a customer of your orator and has been for many years last past, and that its bills as a consumer of the gas manufactured and sold by your orator during the year 1899, and consumed by said city of Chicago, amounted to upwards of five hundred and fifty thousand dollars, and that the bills for gas manufactured, sold and delivered by your orator to the city of Chicago, and consumed by the city of Chicago, for the year 1900, amounted to upwards of four hundred and ninety thousand dollars, and that the city of Chicago is a customer of your orator in the same sense and in the same way and under the same legal conditions as each and every other customer of your orator in the city of Chicago; and your orator further shows that it has never delivered gas to the city of Chicago except upon annual contracts first made by and between your orator and the city of Chicago, and that it has never delivered gas to any customer or patron in the city of Chicago except upon contracts first made by and between such customer and your orator, and in each and every of such cases your orator has determined what the price should be for the gas to be furnished by your orator to such customer and to the city of Chicago, in accordance with the privileges and powers granted to your orator in its charter as aforesaid.

X.

Your orator further shows that by a statute of the State of Illinois it is provided, among other things, that all gas companies are authorized and empowered to sell, transfer and convey, or lease, their real and personal property, rights, franchises and privileges, in whole or in part, to any other gas company doing business in the same city, town or village, and such other gas company is authorized to purchase or lease, and to hold and enjoy, said property.

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XI.

Your orator further shows that pursuant to the power and authority granted to and conferred upon gas companies doing business in the same city, town or village in the State of Illinois, by the act entitled, "An act in relation to gas companies, approved June 5th,

1897, in force July 1, 1897," and of the power granted to and conferred upon your orator in and by its charter, as aforesaid, the Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Illinois Light, Heat and Power Company, and the Chicago Economic Fuel Gas Company, in August, 1897, for a valuable consideration, transferred to your orator, and your orator then and there acquired and took over, all the gas mains, pipes, feeders, service pipes, connections and appurtenances, and all the manufacturing plants, buildings, machinery and property of the said named gas companies, and subsequently, and in January, 1898, the Mutual Fuel Gas Company and the Hyde Park Gas Company, transferred to your orator for a valuable consideration, and your orator then and there acquired and took over, all the gas mains, pipes, feeders, service pipes, connections and appurtenances, and all the manufacturing plants, buildings, machinery and property of the said Mutual Fuel Gas Company and of the Hyde Park Gas Company, and subsequently, and in November, 1898, the Calumet Gas Company transferred to your orator, for a valuable consideration, and your orator then and there acquired and took over, all the gas mains, pipes, feeders, service pipes, connections and appurtenances, and all the manufacturing plant, buildings, machinery and property of the said Calumet Gas Company.

And your orator states that all the property of the said several gas companies so transferred to and acquired and taken over by your orator was, at the time of such transfer and acquisition, severally situated within the corporate limits of the city of Chicago.

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XII.

Your orator further shows that said gas companies last named were severally corporations organized subsequent to 1870 under the general incorporation act of the State of Illinois, except the Chicago Gas Light and Coke Company and the Hyde Park Gas Company; that said gas companies severally were engaged in manufacturing and distributing gas in various sections of the city of Chicago; that the Consumers' Gas Company, the Equitable Gas Light and Fuel Company and the Chicago Economic Fuel Gas Company furnished gas only in a portion of the south division, so called, of the city of Chicago; that the Chicago Gas Light and Coke Company supplied gas in parts of the south and north divisions of the city of Chicago, and had laid some pipes and mains in the west division of the city of Chicago; that the Suburban Gas Company furnished gas in part of the territory formerly comprised within the town of Lake View; the Mutual Fuel Gas Company and the Hyde Park Gas Company severally supplied gas in a part of the territory formerly comprised in the town or village of Hyde Park, and the Calumet Gas Company in a certain other part of the territory formerly comprised in the town or village of Hyde Park. The Lake Gas Company furnished gas in a part of the territory formerly comprised within the corporate limits of the town of Lake. The Illinois Light, Heat and

Power Company did not distribute any gas to consumers, and your orator distributed gas chiefly in the west division of the city of Chicago, so called, although its pipes and mains extended
56 into the south division of the city of Chicago; that the plants, pipes, mains, feeders and appliances of all of said gas companies together were insufficient to supply all of the gas necessary to light the streets, alleys, highways, public squares and places of said city of Chicago and to supply all of the citizens of the city of Chicago who desired to be furnished with gas, and upon the acquisition by your orator of the plants and mains and pipes severally of said Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company, the Suburban Gas Company, the Lake Gas Company, the Illinois Light, Heat and Power Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company, said companies severally ceased and desisted from manufacturing and supplying gas to consumers thereof, all of which consumers, however, and many thousand other consumers, in said city of Chicago, as quickly as connections, changes, and extensions of its enlarged system and property could be made by your orator, as hereinafter described, were and thence hitherto have been supplied and furnished with gas by your orator.

XIII.

Your orator further shows that the Chicago Gas Light and Coke Company is a body corporate, created by an act of the General Assembly of the State of Illinois, entitled "An act to incorporate the Chicago Gas Light and Coke Company," approved February 12, 1849, which act is in the words and figures following, that is to say:

57 An act to incorporate the Chicago Gas Light and Coke Company.

"*Be it enacted by the people of the State of Illinois, represented in the General Assembly:*

SEC. 1. That H. L. Stewart, W. S. Bennett, F. T. Sherman, P. L. Updike, P. Page, and their associates, be, and they are hereby created a body politic and corporate, with perpetual succession, by the name and style of 'The Chicago Gas Light and Coke Company,' and by that name they and their successors shall be capable in law of contracting and being contracted with, suing and being sued, defending and being defended, in all courts and places, and in all matters whatsoever with full powers to acquire, hold, occupy, and enjoy all such real and personal estate as may be necessary and proper for the construction, extension and usefulness of the works of said company, and for the management and good government of the same; and they may have a common seal, and the same may alter, break and renew at pleasure.

SEC. 2. The corporation hereby created shall have full power and authority to manufacture and sell gas, to be made from any or all of the substances, or a combination thereof, from which inflammable gas is usually obtained, and to be used for the purpose of lighting

the city of Chicago, or the streets thereof, and any buildings, manufactories, public places or houses therein contained; and to erect all necessary works and apparatus, and to lay pipes for the purpose of conducting gas in any of the streets or avenues of said city. *Provided*, That no permanent injury or damage shall be done to any street, lane or highway in said city. The real estate which this corporation is entitled to hold shall not exceed in value fifty thousand dollars.

SEC. 3. The capital stock of said company shall not exceed three hundred thousand dollars, to be divided into shares of twenty-five dollars, to be subscribed for and paid in such proportion as shall be prescribed by the by-laws and rules for regulating the concerns of said company; as they shall think proper and necessary respecting the management and disposition of the stock, property and estate of said company; the duties of the officers, artificers and agents to be employed; the number and election of directors, and all such matters as appertain to the concerns of said company. Said com-
58 pany shall have the exclusive privilege of supplying the city of Chicago and its inhabitants with gas for the purpose of affording light for ten years."

Approved February 22, 1849.

Your orator further shows that said act approved February 12, 1849, was amended by an act of the General Assembly, approved January 17, 1855, in the words and figures following that is to say:

"An act to amend an act entitled 'An act to incorporate the Chicago Gas Light and Coke Company.'

SEC. 1. The Chicago Gas Light and Coke Company is hereby authorized to increase the capital stock of said company one million of dollars, at such times and in such manner as the board of directors shall from time to time direct.

Said company is also authorized to borrow such an amount of money for the purpose of constructing, carrying on and completing its works, upon such terms as the board of directors shall judge best, and for such purpose may issue its bonds and mortgage its property; and all bonds heretofore issued for such purpose, and all mortgages executed to secure the same by said company, are hereby legalized.

Said company shall also have the right to purchase and hold such amount in value and extent of real estate in the city of Chicago, as may be necessary for its business, and to carry out the objects of its incorporation.

SEC. 2. So much of the act to which this is an amendment as conflicts with this act, is hereby repealed.

This act shall take effect from and after its passage."

Approved Jan. 17, 1855.

That said Chicago Gas Light and Coke Company, subsequent to its organization under said acts aforesaid, purchased and acquired real estate, and erected gas works and laid down certain gas mains

and connections and began and continued to manufacture and distribute gas until it disposed of its plant and property to your orator, as hereinbefore set forth.

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XIV.

Your orator further shows that the Consumers' Gas Company is the successor of a corporation known as the Consumers' Gas, Fuel and Light Company, a corporation organized on or about January 25, 1882, for the manufacture, sale and distribution of gas for fuel and lighting purposes in the city of Chicago; that the common council of the city of Chicago, by an ordinance passed April 28, 1882, granted to said last-named company the right to construct, maintain and operate gas works within the city of Chicago, together with a right of way along, upon and under all the avenues, streets, alleys and public places in said city for the purpose of furnishing, operating, repairing and maintaining one or more lines or mains of gas pipes and all necessary feeders and service pipes in connection therewith, for lighting and fuel purposes, together with other privileges; which ordinance was accepted by said Consumers' Gas, Fuel and Light Company, and was in the words and figures following, to wit:

An ordinance granting rights to the Consumers' Gas, Fuel and Light Company to construct, maintain and operate gas works within the city of Chicago (passed April 28, 1882).

"*Be it ordained by the city council of the city of Chicago:*

SECTION 1. Subject to the terms and conditions of this ordinance there is hereby granted to the Consumers' Gas, Fuel and Light Company, of Chicago, the right to construct, maintain and operate gas works within the city of Chicago, together with the right of way along, upon and under all avenues, streets, alleys and public places in said city, for the purpose of placing operating, repairing and maintaining one or more lines of gas mains and pipes and all necessary feeders and service pipes in connection therewith, for lighting and fuel purposes.

SEC. 2. Such company or corporation shall not lay its main pipes in any such avenue, street, alley or public place of said city,
60 unless it shall at the said time lay down all feeders or service pipes necessary to make connection, without any subsequent disturbance of the pavement or surface of such avenue street or public place, with each and all building lots fronting or abutting thereon and all service pipes or feeders laid by said company shall be coated with Dr. Angus Smith's composition, or some other equally good material for preserving said service pipes or feeders from decay. Such company or corporation shall not charge any person desiring to make a connection with any service pipe laid, or to be laid by such company or corporation, more than twenty-five cents a foot for such service pipe when laid. Said company shall, when ordered by a majority of the city council, extend its main pipes in any block one-half of which shall be improved by buildings.

SEC. 3. That such company or corporation shall do no permanent injury to any street, sidewalk, alley, avenue or public place, or shade tree, or in any manner unnecessarily disturb or interfere with any water pipe, sewer or gas pipe, telegraph or electric wires, cables or pipes, now or hereafter laid by said city or any authorized company or corporation; and when such company or corporation shall open ground in the same, they shall forthwith restore the street, pavement, sidewalk or ground, or water pipe, sewer or gas pipe, to a condition equally good as before, at the expense of said company, and if said company shall fail or refuse so to do, the same may be done by said city, and the said company shall be liable for the cost thereof; and said company shall not make any excavations in any street, alley, avenue or public place, without first procuring a permit for that purpose from the department of public works of said city. When any excavation shall be made by said company in any street, alley or public place, paved with wooden blocks, the foundation boards or planks shall be removed without being cut, unless such cutting shall be especially permitted by the department of public works of said city. The said company shall not use the public fire-hydrants of said city, nor any water therefrom, without a license and permit from the department of public works of said city. The said company shall, upon notice from the department of public works of said city, remove or change any gas main, pipe, service pipe or feeder which may be in the way of or interfere with the construction or erection of any viaduct, public building or other public structure within said city.

61 SEC. 4. Such company or corporation shall not open or encumber more of any street, avenue, alley or public place, at any one time, than may be necessary to enable it to proceed with advantage in the laying of any such main pipe, feeder or service pipe, nor shall said company or corporation permit any such street avenue, alley or public place to remain open or encumbered for a longer period than shall be necessary to execute the work for which the same shall have been opened or without putting up the necessary barriers and lights, so as to effectually prevent the happening of any accident in consequence of such opening or encumbering of such street, alley avenue or public grounds.

SEC. 5. Such company or corporation shall be liable to and shall compensate the city of Chicago and pay any private individual, owner or owners, or parties interested in an property adjacent to any street, avenue, alley or public place, opened or injured by them, for all damages which may result from leaks of pipe, or by reason of such company or corporation having negligently opened, encumbered, protected or guarded any such street, avenue, alley or public place in said city.

SEC. 6. Such company or corporation shall be subject to all general ordinances of the city of Chicago in regard to gas companies. And the city of Chicago shall have the right, at any time, to provide for the appointment of one or more inspectors of gas with all the power and authority incident to such position, and which the said city may deem necessary to protect the city of Chicago in its corpo

rate rights and individual consumers of gas, against oppression or fraud; and, if the said city shall deem it necessary, to require any inspector (or other city official) to certify to the correctness of all gas bills of consumers of gas furnished by such company or corporation. All meters used by said company for measuring gas shall be subject to inspection and approval by such person or persons, officer or officers, as may be appointed by said city for that purpose, and said company shall pay all reasonable costs and charges of such inspection, the same to be fixed by the city council of said city.

SEC. 7. Such company or corporation shall supply gas light under uniform and sufficient pressure between sunset and sunrise of each day, and the quality of the same shall be as nearly uniform as practicable, averaging for any one month not less than sixteen sperm
62 candles burning 120 grains per hour, to be determined by authorized photometrical tests, a five-foot burner being used.

SEC. 8. The rights and privileges hereby granted are upon the express condition that no gas flowing through any main pipe, feeder or service pipe, laid by said company or corporation or by its authority, shall be charged for, to general consumers thereof, at a rate exceeding one dollar and seventy-five cents per thousand feet cubic: Provided, that to all consumers using at the rate of 100,000 cubic feet and over, per annum, a rebate of at least twenty-five cents per 1,000 feet shall be allowed, and to attempt to collect at a greater rate than that herein specified for gas consumed from any such main pipe, feeder or service pipe, shall work a forfeiture of the rights and privileges hereby granted. The rights and privileges granted are upon the further express condition that such company or corporation shall not extend its pipes beyond the limits of the city, or allow any connection to be made with its pipes, so that gas shall be furnished through its pipes to any consumer outside the city of Chicago.

SEC. 9. In the event that such company or corporation, within three years from the date of the passage of this ordinance giving it permission to lay its main pipes, etc., shall not have built and completed gas works in said city sufficiently extensive to enable it to manufacture and distribute gas to an amount not less than 10,000,000 feet in every thirty days, and located within the limits of the city of Chicago, and shall not have commenced such work and expended thereon at least five hundred thousand dollars within eight months from the date of the passage of this ordinance, or if such company or corporation shall at any time enter into any combination, directly or indirectly, with any gas company or companies, concerning the rates (or price) to be charged for gas, either to the city or private consumers, or if such company or corporations shall directly or indirectly sell, lease or transfer its franchises and privileges to any other gas company or corporation, or if such company or corporation, having commenced to manufacture gas, shall cease for a period of more than ten consecutive days (unless by reason of unavoidable accident) to furnish gas through their pipes, the rights and privileges hereby granted shall cease and be of no more force or effect; or shall fail or refuse to extend its main pipes, as required by section 2 of

this ordinance, and it shall not require the judgment or de-
63 cree of any court of law or equity to determine the said rights and privileges, but the same shall wholly cease and determine, absolutely and at once, upon the happening of any of the matters or things in this section specified.

SEC. 10. This ordinance shall not be in force as to said company or corporations until it shall have been accepted by such company or corporation, such acceptance to be made by the vote of such company or corporation, duly passed or recorded nor until such company or corporation shall have given and filed in the city clerk's office a good and sufficient bond, with two or more good and sufficient sureties, in the penal sum of $500,000, conditioned that such company or corporation shall and will, within three years from the date of the passage of this ordinance, build and complete gas works in said city, sufficiently extensive to enable it to manufacture and distribute gas to an amount not less than 10,000,000 feet in every thirty days, and located within the limits of the city of Chicago, and that the rate to be charged to the consumers of gas which may flow through the pipe laid by such company or corporation, or by its authority, shall never exceed the rate named and specified in section 8 of this ordinance, and that such company or corporation will not sell, lease or transfer its franchises and privileges to any other gas company, and shall and will not enter any combination with any other gas company concerning the rate (or price) to be charged for gas, and to pay all damages which the city of Chicago, or any consumer of the gas furnished by such company or corporation, shall suffer by reason of the failure of such company or corporation to perform any of the obligations or conditions of this ordinance, such bond and sureties to be approved by the mayor and city comptroller.

SEC. 11. The liability of said company to said city, or to person who may be injured by the exercise by said company of any rights and privileges hereby granted, shall not be limited by the penalty of said bond, nor shall the remedy against said company be confined to the said bond, it being understood that such remedy is merely cumulative, and that said city of Chicago and any person or persons, shall have the same remedies against said company as it or they would or might have if no such bond were given. In case the duties of the department of public works shall be devolved by said city on any other department or officer, the permits and licenses herein mentioned shall be applied for to such department or officer."

64 Your orator further shows that gas works were erected by said Consumers' Gas, Fuel and Light Company, and some mains laid, and said corporation proceeded to manufacture and supply gas, in a part of the city of Chicago, and so continued until the happening of certain events as hereinafter mentioned. That said company executed, sold and delivered an issue of bonds secured by a mortgage or deed of trust upon its property and franchises, which bonds and mortgages were subsequently foreclosed, and on or about November 21, 1886, the Consumers' Gas Company was organ-

ized for the purpose of manufacturing and selling fuel and illuminating gas in the city of Chicago, and by purchase acquired at the foreclosure sale under the mortgage or deed of trust executed and delivered by said Consumers' Gas, Fuel and Light Company, all and singular the plant, property, assets and franchises of said last-named corporation, and thereafter, and until its property was acquired and taken over by your orator in August, 1897, as aforesaid, said Consumers' Gas Company operated said plant and manufactured, sold and distributed gas in a part of the city of Chicago.

XV.

Your orator further shows that on or about August 3, 1885, the Equitable Gas Light and Fuel Company of Chicago was incorporated for the purpose of making gas of any and all kinds, and of using, supplying, furnishing or otherwise disposing of the same to the city of Chicago and its vicinity. By virtue of an ordinance adopted by the common council of the city of Chicago, August 10, 1885, there was granted to said Equitable Company the right to construct, maintain and operate gas works within the city of Chicago, together with a right of way along, upon and under all the avenues, streets, alleys and public places of said city, for the purpose of furnishing, operating, repairing and maintaining one or more lines of gas mains and pipes, and all necessary feeders and service pipes in connection therewith, for lighting and fuel purposes; that under its charter powers and the privileges granted by said ordinance, the Equitable Gas Light and Fuel Company erected and maintained a gas plant for the manufacture of gas, and did lay down, operate and maintain some gas mains and connections, and did manufacture and sell gas in a part of the city of Chicago, until said Equitable Gas Light and Fuel Company disposed of its property and plant to your orator, as hereinbefore set forth; that the ordinance granted by the city of Chicago to the Equitable Gas Light and Fuel Company was in the words and figures following, that is to say:

An ordinance granting rights to the Equitable Gas Light and Fuel Company to construct, maintain, and operate gas works (passed August 10, 1885).

"*Be it ordained by the city council of the city of Chicago:*

SEC. 1. Subject to the terms and conditions of this ordinance, there is hereby granted to the Equitable Gas Light and Fuel Company of Chicago, its successors and assigns, the right to construct, maintain and operate gas works within the city of Chicago, together with the right of way along, upon and under all the avenues, streets, alleys and public places in said city, for the purpose of placing, operating, repairing and maintaining one or more lines of gas mains and pipes and all necessary feeders and service pipes in connection therewith for lighting and fuel purposes.

SEC. 2. Such company or corporation shall not lay its main pipes n any such avenue, street, alley or public place of said city, unless shall at the time lay down all feeders or service pipes necessary to

make connections without any subsequent disturbance of the pavement or surface of such avenue, street or public place with each and all building lots fronting or abutting thereon, and all service pipes or feeders laid by said company shall be coated with Dr. Angus Smith's composition, or some other equally good material, for preserving said service pipes or feeders from decay. Such company or corporation shall not charge any person desiring to make a connection with any service pipe, laid or to be laid by such company or corporation, more than twenty-five cents a foot for such service pipe when laid. Said company shall, when so ordered by a two-thirds vote of all the alderman elected, extend their main pipes in any block three-quarters of which shall be improved by buildings.

66

SEC. 3. Such company or corporation shall do no permanent injury to any street, sidewalk, alley, avenue or public place, or shade tree, or in any manner unnecessarily disturb or interfere with any water pipe, sewer or gas pipe now or hereafter laid by said city or any authorized company or corporation, and when such company shall open ground in the same it shall forthwith restore the street pavement, sidewalk, or ground, or water pipe, sewer or gas pipe, to a condition equally as good as before, at the expense of said company, and if said company shall fail or refuse so to do, the same may be done by said city, and the said company shall be liable for the cost thereof; and said company shall not make any excavation in any street, alley, avenue or public place without first procuring a permit for that purpose from the department of public works of said city. When any excavations shall be made by said company in any street, alley or public place paved with wooden blocks, the foundation boards or planks shall be removed without being cut unless such cutting shall be specially permitted by the department of public works of said city. The said company shall not use the public fire-hydrants of said city nor any water therefrom, without a license or permit from the department of public works of said city. The said company shall, upon notice from the department of public works of said city, remove or change any gas-main pipe, service pipe, or feeder, which may be in the way of, or interfere with, the construction or erection of any viaduct, public building or other public structure within said city.

SEC. 4. Said company or corporation shall not open or encumber more of any street, avenue, alley or public place, at any one time, than may be necessary to enable it to proceed with advantage in the laying of any such main pipes, feeders or service pipe, nor shall said company permit any such street, avenue, alley or public place to remain open or incumbered for a longer period than shall be necessary to execute the work for which the same shall have been opened, or without putting up the necessary barriers and lights, so as to effectually prevent the happening of any accident, in consequence of such opening or encumbering of such street, alley, avenue or public grounds.

SEC. 5. Such company or corporation shall be liable to, and
67 shall compensate the city of Chicago, and pay any private individual, owner or owners, or parties interested in any property adjacent to any street, avenue, alley or public place opened or injured by it, for all damages which may result from leaks of pipe, or by reason of such company having neglectfully opened, incumbered, protected or guarded any such street, avenue, alley or public place in said city.

SEC. 6. Such company or corporation shall be subject to all general ordinances of the city of Chicago in regard to gas companies. And the city of Chicago shall have the right, at any time, to provide for the appointment of one or more inspectors of gas, with all the power and authority incident to such position, and which the said city may deem necessary, to protect the city of Chicago, in its corporate rights, and individual consumers of gas against oppression or fraud; and, if the said city shall deem it necessary to require any inspector (or other city official) to certify to the correctness of all gas bills of consumers of gas furnished by such company. All meters used by said company for measuring gas shall be subject to inspection and approval by such person or persons, officer or officers, as may be appointed by said city for that purpose, and said company shall pay all reasonable costs and charges of such inspection, the same to be fixed by the city council of said city.

SEC. 7. Such company or corporation shall supply gaslight under uniform and sufficient pressure between sunset and sunrise of each day, and the quality of the same shall be as nearly uniform as practicable, averaging for any one month not less than sixteen sperm candles, burning 120 grains per hour, to be determined by authorized photometrical tests, a five-foot burner being used.

SEC. 8. The rights and privileges hereby granted are upon the express condition that no gas flowing through any main pipe, feeder or service pipe, made by said company or by its authority, shall be charged for, to general consumers thereof, at the rate exceeding $1.75 per thousand cubic feet; *provided*, to all customers using 100,000 cubic feet and over per annum, a rebate of at least 25 cents per thousand feet shall be allowed, and to attempt to collect at a greater rate than that herein specified for gas consumed from any such main pipe, feeder or service pipe, shall work a forfeiture of the rights and privileges hereby granted.

SEC. 9. In the event that such company or corporation
68 within three years from the date of the passage of this ordinance, giving it permission to lay its main pipes, etc., shall not have built and completed gas works in said city sufficiently extensive to enable it to manufacture and distribute gas to an amount not less than 10,000,000 feet in every thirty days and located within the limits of the city of Chicago, and shall not have commenced such works and expended thereon at least $100,000 within twelve months from the date of the passage of this ordinance, or if such company shall at any time enter into any combination, directly or indirectly, with any gas company or companies, concerning the rates (or price) to be charged for gas either to the city or private con-

sumers, or if such company shall, directly or indirectly sell, lease or transfer its rights and privileges hereunder to any gas company or corporation now engaged in the manufacture and sale of gas within the city of Chicago, or commence to manufacture gas, shall cease for a period of more than ten consecutive days (unless by reason of unavoidable accident), to furnish gas through its pipes, the rights and privileges hereby granted shall cease and be of no more force or effect or shall fail or refuse to extend their main pipe as required by section 2 of this ordinance; and it shall not require the judgment or decree of any court of law or equity to determine the said rights and privileges, but the same shall wholly cease and determine, absolutely and at once upon the happening of any of the matters or things in this section specified.

SEC. 10. This ordinance shall not be in force as to said company or corporation until it shall have been accepted by such company or corporation, such acceptance to be made by a vote of such company or corporation and notice thereof in writing filed with the city clerk, nor until such company shall have given and filed in the city clerk's office a good and sufficient bond, with two or more good and sufficient sureties, in the penal sum of $100,000, conditioned that such company shall and will, within three years from the date of the passage of this ordinance, build and complete gas works in said city sufficiently extensive to enable it to manufacture and distribute gas to an amount not less than 10,000,000 feet in every thirty days, and located within the limits of the city of Chicago, and that the rate to be charged to the consumers of gas which may flow through the pipes laid by such company, or by its authority shall never exceed the rate named and specified in section 8 of
69 this ordinance, and that such company will not sell, lease or transfer its franchises and privileges to any gas company now engaged in the manufacture and sale of gas within the city of Chicago, and shall and will not enter any combination with any other gas company concerning the rate (or price) to be charged for gas, and to pay all damages which the city of Chicago, or any consumer of the gas furnished by such company, shall suffer by reason of the failure of such company to perform any of the obligations or conditions of this ordinance; such bond and sureties to be approved by the mayor and city comptroller.

SEC. 11. The liability of such company or corporation to said city or to any person who may be injured by the exercise by said company of any of the rights and privileges hereby granted, shall not be limited by the penalty of said bond, nor shall the remedy against said company be confined to the said bond, it being understood that such remedy is merely cumulative and that said city of Chicago, and any person or persons, shall have the same remedies against said company as it or they would or might have if no such bond were given. In case the duties of the department of public works shall be devolved by said city on any other department or officer the permits and license herein mentioned shall be applied for to such department or officer.

This ordinance shall take effect and be in force from and after its passage."

XVI.

Your orator further shows that on the 18th day of November, 1885, the Illinois Light, Heat and Power Company was incorporated for the purpose of making, distributing, selling or otherwise disposing of gases of any and every description, for any and all purposes for which the same should or might be or become useful, adaptable or available. That said Illinois Light, Heat and Power Company never procured any rights or privileges from the city of Chicago to lay pipes or mains in the streets, and said company laid no mains, pipes or feeders in the streets of the city of Chicago, but shortly after its incorporation, and upon the erection and
70 construction of its gas-making plant, leased the same to your orator; and that there was thereafter manufactured in said plant a part of the gas sold and distributed by your orator through the mains, pipes, feeders and appliances of your orator.

XVII.

Your orator further shows that on or about July 5, 1881, the Lake Gas Company was incorporated for the purpose of manufacturing and supplying gas in the town of Lake; that said company, as successor or assignee of the Northwestern Gas Works Company, was, by the town of Lake, by ordinance adopted July 5, 1881, authorized to lay down, maintain and operate gas mains, pipes, feeders and appliances in all the streets of the town of Lake; that thereafter said Lake Gas Company erected works and laid some pipes and mains in the streets of said town, and engaged in the business of manufacturing and selling gas in a part of said town of Lake, and so continued until said Lake Gas Company disposed of its plant and property to your orator as aforesaid. That in the year 1889 the town of Lake by annexation became a part of the city of Chicago, and the territory formerly comprised in said town of Lake has since remained within the corporate limits of said city of Chicago.

That the ordinance granted by the town of Lake to the Northwestern Gas Works Company, and so assigned to said Lake Gas Company, was and is in the words and figures following, to wit:

An ordinance granting rights to the North Western Gas Works Company in certain territory (passed July 5, 1881).

"*Be it ordained and enacted by the board of trustees of the town of Lake, and it is hereby enacted by authority of the same:*

SEC. 1. That exclusive and irrevocable privilege and authority is hereby granted to the said North Western Gas Works Com-
71 pany, a corporation, existing by virtue of the laws of New York its assigns and representatives, to furnish illuminating gas for the period of twenty-five years, and to open such streets, alleys, highways and public grounds in the said town of Lake as may be necessary to enable said gas works company to lay down, operate, maintain and extend its street mains and service pipes.

The privileges and authority hereby granted are upon the following express conditions:

First. That the said gas works company, its successors and assigns, shall and will forever indemnify and save harmless the said town of Lake against all and from any and all damages, judgments, decrees, costs and expenses of the same which it may suffer, or which may be recovered or obtained against said town of Lake, for or by reason of the granting of such privileges and authority, or for or by reason of, or growing out of, or resulting from the passage of this ordinance, or any other matter or thing connected therewith, or with the exercise by said company its grantees or assigns under, or by virtue of the provisions of this ordinance.

Second. That the said gas company, its successors and assigns, shall place all such streets, avenues, highways and public grounds in as good condition as they were before said work was begun.

Third. That the main supply-pipes of said gas company shall be laid on a line parallel to and ten (10) feet west of the center line of all streets running north and south, and on a line parallel to and ten (10) feet south of the center line of all streets running east and west, unless otherwise ordered by the board of trustees and in such a manner as not to interfere with any improvements said board may deem proper to make upon such streets, alleys, avenues, highways and public grounds, or have made heretofore.

SEC. 2. That for and in consideration of the foregoing exclusive privilege and authority, it shall be obligatory upon such gas works company, its successors, representatives and assigns to construct in said town of Lake suitable buildings, erections and fixtures for the manufacture of gas for consumption and use in said town, at such place in said town as said company may desire, *provided*, such place is acceptable to said board of trustees, and to lay mains along such streets, alleys, avenues, highways and public grounds as the exigencies of business and private demands of the inhabitants of
72 said town may require, and where the consumption of gas will justify the laying of mains and service pipes; and to furnish and supply gas to such public lamps along the line of such main pipes as may be laid, as specially provided by this ordinance, and shall also be ordered from time to time by the board of trustees of said town; such public lamps to have burners which will furnish an equivalent in illuminating value to that produced by a burner consuming four (4) cubic feet of good coal gas per hour, including the lighting, extinguishing, cleansing and repairing of said street and public lamps, the price therefor to be paid by said town, thirty-two $\frac{50}{100}$ dollars per lamp per annum, and when the number of lamps shall reach two hundred and fifty, then at the price of thirty dollars per lamp per annum, and when the number of lamps shall reach five hundred or upwards, then at the price of twenty-seven $\frac{50}{100}$ dollars per lamp per annum for the first ten years of the life of this ordinance, and for the balance of the term or life of this ordinance at such a price as may be mutually agreed upon, not to be less than twenty ($20) dollars per lamp per annum, to be paid monthly in all cases except as to the first year hereof, and for gas consumed and

services in connection with said lamps for such first year payment shall be made by a warrant upon the treasurer of said town, to be paid out of a fund collected by special assessments or property deemed benefited, to be levied during the year 1881, and if the same cannot, for any reason, be so paid, then out of the general fund of said town.

SEC. 3. That said lamps are to be lighted and extinguished in accordance with what is known as the Philadelphia scale or standard of time.

SEC. 4. That the style of the first one hundred twenty-five (125) lamps to be used shall be what is known as the Stewart improvement, and the style of the lamp-post to be used shall be like that now used in the city of Chicago.

SEC. 5. That said town of Lake shall pay for putting in all pipes, posts and fixtures for its own use and benefit from the main pipes, where the connection is made; said pipe and fixtures to be put in under the supervision of said company or their representatives.

SEC. 6. That said company shall furnish gas to citizens, residents and manufacturers of said town, for their private consumption, at a price not to exceed two (2) dollars and fifty (50) cents for the
73 equivalent in illuminating power or value of one thousand (1,000) cubic feet of good coal gas of fourteen (14) candle-power, said citizens, residents or manufacturers to pay for putting in the necessary pipes and fixtures to connect the point of consumption with the main pipes—such connection to be put in under the supervision of said gas works company, or their representatives.

SEC. 7. That the said town of Lake further agrees that the right to light its streets, highways, public grounds or buildings shall not be granted to any other corporation, corporations, person or persons whatsoever during the term of this ordinance, and to purchase from said company, or its representatives, so much gas as may be required to properly illuminate such principal streets and public grounds of said town during the term of this ordinance as its board of trustees may from time to time order to be supplied with gas and lighted as aforesaid.

SEC. 8. Said gas works company to commence works within thirty (30) days from the acceptance of this ordinance, and carry the same steadily forward until the mains are laid in the following-named streets, to wit: Halsted street, from Thirty-ninth street to Forty-third street; in Forty-third street, from Halsted street to Wentworth avenue; in Wentworth avenue, from Thirty-ninth street to Sixty-seventh street; in Forty-seventh street, from Wentworth avenue to State street; in Fifty-first street, from School street to the tracks of the Chicago, Rock Island and Pacific Railroad Company; in Thirty-ninth street, from Wentworth avenue to State street, and in State street, from Thirty-ninth to Fortieth street. The laying of said pipes in said streets to be completed during the year eighteen hundred and eighty-one (1881), unavoidable delays excepted, and in case such delays occur, to be completed as soon thereafter as practicable, due diligence to be exercised in the prosecution of the work by said gas works company.

SEC. 9. That at least one hundred and twenty-five public lamps shall be erected on the line of said main pipes as soon as said gas works company are prepared to furnish gas for the same. That said gas works company, by acceptance of this ordinance, agree to furnish said one hundred and twenty-five (125) lamp-posts, lanterns of the style above mentioned in the ordinance, together with lamp-posts, cocks and burners of the style and pattern generally used in the principal cities of the country, at sixteen (16) dollars and forty (40) cents each; and for service pipes, excavations and labor
74 necessary to put the same in order for lighting, three (3) dollars and sixty (60) cents each additional for each lamp-post.

SEC. 10. That the one hundred and twenty-five (125) lamps, lamp-posts, burners and cocks above mentioned shall be paid for by warrant drawn on the treasurer of said town, to be paid out of a fund, when collected, to be collected by special assessment on the property deemed benefited by the erection of said lamps and lamp-posts, to be levied during the year eighteen hundred and eighty-one (1881).

SEC. 11. That in case the board of trustees shall deem it necessary to light the streets in isolated localities, where the consumption of gas will not warrant the laying of pipes, said company shall light the same with oil or gasoline lamps, at a price to be mutually agreed upon by said board of trustees and said company, at a price as low as any responsible parties will agree to light the same.

SEC. 12. This ordinance shall take effect and be in force from and after its passage and acceptance, and to be void unless the said gas works company shall file its written acceptance of the same with the town clerk of said town of Lake within twenty (20) days after its passage."

XVIII.

Your orator further shows that on or about November 5, 1884, there was organized the Suburban Gas Company, for the purpose of manufacturing or obtaining gas made from coal or other substances and materials, and the distribution and sale of the same; that said Suburban Gas Company did not manufacture gas, but confined its operations to selling gas in a part of the town of Lake View, Cook county, Illinois, and by an ordinance of said town was authorized to supply and sell gas within the town of Lake View, and lay down mains and connections for the purpose of distributing gas. That subsequent to the incorporation of said company and the passage of said ordinance, said Suburban Gas Company laid some gas
75 mains and sold gas in a part of said town of Lake View, until said company disposed of its property to your orator as hereinbefore set forth; that the ordinance of the town of Lake View granted to said Suburban Gas Company was and is in the words and figures following, to wit:

An ordinance granting rights to the Suburban Gas Company in the town of Lake View (passed and approved October 29, 1884; accepted November 17, 1884).

"*Be it ordained by the board of trustees of the town of Lake View:*

SECTION 1. That permission and authority be and the same are hereby granted to the Suburban Gas Company to supply and sell gas made from coal or other substances, to be used for heating and illuminating purposes, within the town of Lake View, and to lay and maintain gas mains and service pipes for distributing said gas in any of the public streets, alleys, avenues, highways or grounds within the limits of said town.

SEC. 2. That before said company shall open any street, alley, highway or other public place for the purpose of introducing its mains or service pipes, it shall cause notice of its intention so to do, to be given to the corporate authorities of said town, specifying in such notice the streets or parts of street, alley or other public place in which it is proposed to introduce such pipes.

SEC. 3. In all cases where said company shall open any street, alley or other public place within said town, for the purpose of laying its pipes therein, it shall restore the same to its former condition as nearly as practicable with as little delay as possible; and no more of any street, alley or other public place shall be disturbed or incumbered in the laying of said pipe, nor shall the same remain open or incumbered for a longer time than shall be necessary to enable said company to complete its work as above provided. And said company shall be liable for any and all damages resulting from its negligent conduct in the prosecution of said work, and from its failure or neglect to properly guard and protect the excavations made by it in the progress thereof.

SEC. 4. That whenever said company shall desire to open any improved street it shall first procure a permit from said town so
76 to do, and when any such improved street shall have been opened, said company shall restore the improvement to as good a condition as the same was before such opening, and upon its neglect or refusal to restore the same in such condition, then said town may properly restore the same and said company shall be liable to the town for any costs incurred thereby.

SEC. 5. That whenever said town shall by ordinance order the permanent improvement of any street, it may by further order direct said company to lay in such street its necessary pipes and house connections to all buildings along the line of such improvements.

SEC. 6. The said company shall furnish gas for consumption within said town of an illuminating power of not less than sixteen (16) candles, and to the corporate authorities of said town, for the lighting of the street, public buildings and public places within said town at a price not exceeding one dollar and fifty cents ($1.50) per thousand cubic feet to be measured by automatic regulator burners attached to the lamps, or otherwise as may be agreed between said company and the corporate authorities of said town; and the price

of gas to private consumers within said town shall not exceed two dollars ($2.00) per thousand cubic feet with a discount therefrom of fifty cents (50c.) per thousand cubic feet in case the bills therefor for each month shall be paid within the first ten (10) days of the next succeeding month. And that the town of Lake View shall cause street lamps to be erected a suitable distance along the public street in which the gas mains of said company shall be laid, to be connected with said mains, and shall immediately and for the period of five years thereafter, at all proper hours of the night, take and consume the gas of the said company for the lighting of said streets, and pay for the gas so consumed at and after the price and rate aforesaid. Settlements and payments to be made quarter-yearly. The schedule for the time for lighting and extinguishing said street lamps, and the size of burners thereon, to be the same in use in the north division of the city of Chicago.

SEC. 7. That said company shall within six (6) months of the date of the passage of this ordinance lay in the street- or alleys of said town of Lake View, at least three (3) miles of street mains with proper service pipes connected therewith, for the supplying of gas to actual consumers, and shall within two years extend its
77 mains to Ravenswood, and shall thereafter extend said mains and service pipes as rapidly as the increased demand for gas shall justify such extension.

SEC. 8. Unless the said 'Suburban Gas Company' shall within ten (10) days from and after the passage of this ordinance accept the same and the terms and provision- thereof, and notify the board of trustees of the town of Lake View of such acceptance, all the rights and privileges hereby granted to said company, shall be absolutely forfeited."

XIX.

Your orator further shows that on or about December 9, 1889, there was organized the Chicago Economic Fuel Gas Company, for the purpose of manufacturing and selling fuel or heating gas, and also illuminating gas, and the construction and operation of gas works or plants in the city of Chicago, and to distribute and sell said illuminating gas by means of pipes in the city of Chicago and the various cities and towns in the State of Illinois and throughout the United States, and for such purpose to construct or purchase from others the necessary works, machinery, plants and devices for the manufacture and distribution of illuminating gas in said city; that said company, by ordinance dated December 22, 1890, was given the right and privilege to construct and operate works for the manufacture of fuel gas only within the limits of the city of Chicago, and to place and maintain pipes and mains along the streets and public places of said city. That said ordinance was amended July 13, 1891, by adding the right to manufacture illuminating gas as well as fuel gas; that both of said ordinances were accepted and mains laid and fuel gas furnished by said company in a part of said city of Chicago until said company disposed of its property and plant to your orator, as hereinbefore set forth; that the original

ordinance granted by the city council of the city of Chicago to said Chicago Economic Fuel Gas Company was and is in the words and figures following, to wit:

78 An ordinance granting authority to the Chicago Economic Fuel Gas Company to construct and operate works for the manufacture of fuel gas in the city of Chicago (passed December 22, 1890; accepted January 19, 1891).

"*Be it ordained by the city council of the city of Chicago:*

SECTION 1. Subject to the terms and conditions of this ordinance, there is hereby granted to the Chicago Economic Fuel Gas Company, its successors and assigns, the right to construct and operate works for the manufacture of fuel gas, only, within the city of Chicago, also with the right of way along, upon and under all the avenues, streets, alleys and public places in said city for the purpose of placing, operating, repairing and maintaining a line or lines of gas mains and pipes and all necessary feeders and service pipes in connection therewith, for the distribution of natural and manufactured fuel gas exclusively. Said gases shall, at all times, be of the best quality and highest efficiency respectively for the purposes. *Provided, however*, That the successors and assigns referred to in this section, or elsewhere in this ordinance, shall not be construed to include any other gas company, trust or corporation, as provided in section twelve (12) of this ordinance.

SEC. 2. Such company or corporation shall not lay its main pipes in any such avenue, street, alley or public place of said city, unless it shall at the time lay down all feeders or service pipes necessary to make connection without any subsequent disturbance of the pavement or surface of such avenue, street or public place with each and all building lots fronting or abutting thereon, and all service pipes or feeders laid by said company shall be coated with Dr. Angus Smith's composition, or *or* some other equally good material for preserving said service pipes or feeders from decay. *Provided*, That the main or distributing pipes shall be laid on such portion of the public highway as the commissioner of public works may direct, and at all intersecting streets which are improved the main or distributing pipes shall be laid at right angles thereto and extend at least to the building line, and all feeders or service pipes shall be laid to the curb line of the street. Said company or corporation shall not charge any person desiring to make a connection with any
79 service pipe laid or to be laid by such company or corporation more than 25 cents a lineal foot for such service pipe when laid. Said company shall, when so ordered by a majority vote of all the aldermen elected, extend their mains and supply pipes on any street, avenue or other public highway contiguous to the pipes of said company at the time in use or operation. *Provided*, Such extension shall cover territory one-half of which is improved by buildings.

SEC. 3. That said company or corporation shall do no permanent injury to any street, sidewalk, alleys, avenue or public place, or shade tree, or in any manner unnecessarily disturb or interfere with

any water pipe, sewer, gas pipe, conduit or other underground work now or hereafter laid by said city, or any authorized company or corporation, and when such company shall open ground in any street it shall forthwith restore the street, pavement, sidewalk or ground or water pipe, sewer, gas pipe, conduit or other underground work, to a condition equally as good as before, at the expense of said company, and, if said company shall fail or refuse so to do, the same may be done by said city and the said company shall be liable for and pay the cost thereof. Said company shall not make any excavation in any street, avenue, alley or public place without first procuring a permit for that purpose from the commissioner of public works of said city. When any excavation shall be made by said company in any street, alley or public place paved with wooden blocks, the foundation boards or planks shall be removed without being cut, unless said cutting shall be specially permitted by the commissioner of public works of such city. The said company shall not use the public fire-hydrants of said city or any water therefrom, without paying for same, under a license and permit from the commissioner of public works of said city. The said company shall, upon notice from the commissioner of public works of said city remove or change any gas main pipe, service pipe or feeder which may be in the way or interfere with the construction or erection of any viaducts, public building or other public structure, and whenever said city shall construct or form into a general subway any street, avenue, alley or other public highway, on or through which any pipe or pipes authorized by this ordinance may be located, said company, upon due notice from proper city authorities, shall occupy said subway and place and maintain its pipes and appurtenances therein at its own cost and expense.

80 SEC. 4. Such company or corporation shall not open or encumber more of any street, avenue, alley or public place at any one time than may be necessary to enable it to proceed with advantage in the laying of such main pipes, feeder or service pipes, nor shall said company permit any such street, avenue, alley or public place to remain open or encumbered for a longer period than shall be necessary to execute the work for which the same shall have been opened, or without putting up the necessary barriers and lights so as to effectually prevent the happening of any accident in consequence of such opening or encumbering of such street, alley, avenue or public grounds, nor shall any two next parallel streets be excavated at the same time.

SEC. 5. Such company or corporations shall be liable to and shall compensate the city of Chicago, and pay any private individual, owner or owners, or parties interested in any property adjacent to any street, avenue, alley or public place opened or injured by it, for all damages which may result from leaks of pipes, or by reason of such company having neglectfully opened, encumbered, protected or guarded any such street, avenue, alley or public place in said city: *Provided*, said company shall, in the exercise of the rights and privileges hereby granted, be subject to all laws and ordinances relating to nuisances.

SEC. 6. Such company or corporation shall be subject to all general ordinances of the city of Chicago in regard to gas companies, and the city of Chicago shall have the right at any time to provide for the appointment of one or more inspectors of gas, with all the power and authority incident to such position and which the said city may deem necessary to protect the city of Chicago in its corporate rights and individual consumers of gas. All meters used by said company for measuring gas shall be subject to inspection and approval by such person or persons, officer or officers, as may be appointed by said city for that purpose, and said company shall pay all reasonable cost and charges of such inspection as the same may be fixed by the city council of said city, and said company shall pay the reasonable cost of all necessary city inspectors of the work of construction.

SEC. 7. The rights and privileges hereby granted are upon the express condition that no gas flowing through any main pipe, feeder or service pipe laid, controlled or operated by said company or by its authority, shall be charged for at a rate not to exceed sixty
81 (60) cents per one thousand (1,000) cubic feet for natural gas, nor to exceed fifty (50) cents per one thousand (1,000) cubic feet for manufactured fuel gas, with a rebate of ten (10) cents per thousand (1,000) cubic feet on said above prices in case of payment before the 12th day of the month next succeeding that in which such gas is furnished, and to attempt to collect a greater rate than that herein specified shall work a forfeiture of the rights and privileges hereby granted.

SEC. 8. The laying of the pipes herein authorized shall be under the supervision and direction of the commissioner of public works, and where said company shall apply to the commissioner of public works for permission to lay its pipes on any given street in order to reach any specified point on such street, and there shall be an alley parallel with said street and within three hundred feet of the same, the commissioner of public works shall order such pipe or pipes to be laid in such alley instead of such street, and the use of such alley shall be subject to all the conditions provided herein for streets.

SEC. 9. Said company shall pay annually to the city of Chicago, for and in consideration of the rights and privileges hereby granted, an amount equal to five (5) per cent. of the gross revenue or receipts of said company. Such payment shall be made in the manner following: At the expiration of one year from the time when said company shall commence to distribute gas to consumers in the city of Chicago the president or other chief officer of the company shall file with the city comptroller a statement verified under oath, showing the amount of the gross annual revenue or receipts of said company for the preceding year and shall, at the same time, pay to said comptroller the said amount of five (5) per cent. on the annual gross revenue receipts. Said payment to be made, as herein prescribed, annually during the term of this ordinance.

SEC. 10. This ordinance is granted upon the express condition that said company shall, within two years from the date of the acceptance of this ordinance, have laid, and in operation and ready

for supplying consumers, at least twelve (12) miles of its main pipes within the limits of the city of Chicago, and unless it shall so have constructed and laid the number of miles of distribution pipes herein referred to, then and under these conditions this ordinance shall be and become void and of no effect: *Provided*, however, that the time during which any legal proceedings shall be pend-
82 ing, whereby the said company, its successors and assigns, shall be prevented from or delayed in complying with the requirements of the section, shall not be taken or deemed any part of the time specified. *Provided, further*, however, that the city of Chicago may intervene in any suit and move for its dismissal, in the name of said company, in case such suit may be deemed by the city as collusive or for the purposes of delay or extension of the time herein specified.

SEC. 11. Said company shall file with the city clerk a good and sufficient bond to be approved by the mayor in the penal sum of one hundred thousand dollars ($100,000), conditioned that such company, its successors or assigns, shall comply with all the terms and conditions of this ordinance and shall indemnify and save harmless the city of Chicago against and from any and all damages, judgments, decress and costs of whatsoever kind or nature, by reason of the passage of this ordinance and the exercise of any of the rights and privileges hereby or herein granted.

SEC. 12. This ordinance shall take effect and be in force from and after its passage and the filing and approval of the bond herein required and the acceptance thereof by said company: *Provided*, That if said approved bond and acceptance be not filed within thirty days of the passage hereof, this ordinance, shall be void and of no effect; and, *provided* still further, that if said company shall at any time enter into any combination directly or indirectly, w-th any gas company or companies, concerning the rates or prices to be charged for gas, or is said company shall, directly or indirectly, sell, lease or transfer its plant, property rights and privileges as herein authorized to any other gas company, trust or corporation now or hereafter engaged in the manufacture and sale — gas within the city of Chicago, or if said company, having commenced to manufacture gas, or furnish natural gas shall cease for a perion of more than ten (10) consecutive days, unless by reason of unavoidable accident, or injunction to furnish gas through their pipes, or if said company shall fail or refuse to extend its distribution pipes, as required by this ordinance the rights and privileges hereby granted shall cease and be of no more force and effect.

SEC. 13. The rights and privileges granted by this ordinance shall be granted for the terms of twenty-five (25) years from and after its acceptance, and all rights hereunder shall cease
83 after the expiration of such term. The permission and authority hereby granted are upon the express terms and conditions that at the end of twenty (20) years after the passage of this ordinance the city of Chicago shall have the right to purchase the entire plant of said company and all of its property and effects, of every kind and description, within said city of Chicago, at an ap-

praised value which shall be ascertained and determined by three competent appraisers, who shall have free access to all the books, papers and other data bearing upon the subject. Said appraised value shall not include the value of any rights, privileges and franchises granted by the city. One of said appraisers shall be appointed by the mayor or the city of Chicago, one by said company, and one by the two so selected, and if they cannot agree upon the third appraiser, then any one of the chancellors of the circuit court of Cook county may appoint him. The said appraisers shall make report of the value of said property within six (6) months after their appointment to the mayor and city council, and said mayor and city council shall have the option, at the time within six (6) months after receipt of said report, to purchase said plant and property, together with all its appurtenances and equipments, at the appraised value."

That the amendatory ordinance, above referred to, granted by said city council of the city of Chicago to said Chicago Economic Fuel Gas Company was, and is, in the words and figures following, to wit:

An ordinance amending an ordinance granting to the Chicago Economic Fuel Gas Company the right to construct and operate works for the manufacture of fuel gas within the city of Chicago (passed July 13, 1891).

"*Be it ordained by the city council of the city of Chicago:*

SECTION 1. That the ordinance granted by the city council on the 22nd day of December, 1890, granting unto the Chicago Economic Fuel Gas Company the right to construct and operate works for the manufacture and distribution of fuel gas within the city of Chicago, be, and the same is hereby amended, as follows:

84 Sec. 1 of said ordinance is hereby amended so as to read as follows:

'SECTION 1. Subject to the terms and conditions of said ordinance there is hereby granted to the Chicago Economic Fuel Gas Company, its successors and assigns, the right to construct and operate works for the manufacture of illuminating and fuel gas within the city of Chicago; also, with the right of way along, upon and under all the avenues, streets, alleys and public places in said city, for the purpose of placing, operating, repairing and maintaining a line or lines of gas mains and pipes, and all necessary feeders and service pipes in connection therewith, for the distribution of illuminating gas and natural and manufactured fuel gas. Said gases shall at all times be of the best quality and highest efficiency for the purposes: *Provided, however*, That the successors and assigns referred to in this section, or elsewhere in this ordinance, shall not be construed to include any other gas company, trust or corporation, as provided in section 12 of this ordinance.'

Also, by amending section 7 of said ordinance of December 22, 1890, so that said section shall read as follows:

'SEC. 7. The right and privileges hereby granted are upon the

express condition that the price to be charged for the several kinds of gas shall not be in excess of the following rates: For illuminating gas the charge shall not exceed one dollar and ten cents ($1.10) per one thousand (1,000) cubic feet; for natural gas the charge shall not exceed sixty cents (60) per one thousand (1,000) cubic feet, and for manufactured fuel gas the charge shall not exceed fifty cents (50) per one thousand (1,000) cubic feet, with a rebate of ten cents (10) per one thousand (1,000) cubic feet on said above prices for illuminating, natural and fuel gas, in case of payment before the twelfth day of the month next succeeding that in which said gas is furnished; and to attempt to collect a greater rate than that herein specified shall work a forfeiture of the rights and privileges hereby granted. Said company shall commence work within six months from the passage thereof or this ordinance shall be null and void.'

Also by amending section 9 of said ordinance, so that said section 9 read as follows:

'SEC. 9. Said company shall pay annually to the city of Chicago, for and in consideration of the rights and privileges
85 hereby granted, an amount equal to three (3) per cent. of the gross revenue or receipts of said company from the sale of illuminating gas, and five (5) per cent. on the gross revenue or receipts of the said company from the sale of the natural gas or manufactured fuel gas. Such payments shall be made in the manner following: At the expiration of one year from the time when said company shall commence to distribute either illuminating gas or fuel gas to consumers in the city of Chicago, the president or other chief officer of the company shall file with the city comptroller a statement, under oath, showing the amount of the gross annual revenue or receipts of said company for the preceding year and shall, at the same time, pay to said comptroller the said amount of 3 per cent. on the annual gross revenue or receipts from the sale of illuminating gas, and 5 per cent. on the annual gross revenue or receipts from the sale of natural or fuel gas. Said respective payments to be made as herein prescribed, annually, during the terms of this ordinance. And, in addition to said payments, said company shall, by the said city of Chicago, furnish to said city illuminating gas at the rate of not to exceed seventeen dollars and fifty cents ($17.50) per lamp per annum during the term of this ordinance.'

Also, by striking out the word 'two,' occurring in the third line of section 10 of said ordinance, and inserting in lieu thereof, the word 'three.'

SEC. 2. This ordinance shall take effect and be in force from and after its passage."

That the original ordinance above referred to, granted by said city council of the city of Chicago to said Chicago Economic Fuel Gas Company was also amended by an ordinance passed by the city council of said city on December 29, 1890, which amendatory ordinance is in the words and figures following, to wit:

86 An ordinance amending an ordinance granting authority to the Chicago Economic Fuel Gas Company to construct and operate works for the manufacture of gas (passed December 29, 1890; accepted January 19, 1891).

"*Be it ordained by the city council of the city of Chicago:*

SEC. 1. That the ordinance passed by the city council of the city of Chicago, on the 22d day of December, 1890, granting unto the Chicago Economic Fuel Gas Company the right to construct and operate works for the manufacture and distribution of fuel gas, within the limits of said city, be and the same is hereby amended, as follows: By striking out the last paragraph in section 2, which reads as follows: 'Said company shall, when so ordered by a majority vote of all the alderman elected, extend their mains and supply-pipes on any street, avenue or other public highway contiguous to the pipes of said company at the time in use or operation; *Provided*, such extension shall cover territory one-half of which is improved by buildings.'

Also, by adding to section 3, the following:

'And it shall be the duty of said commissioner of public works to issue all permits asked for under this ordinance, without any delay and in accordance with the terms thereof.'

Also by striking out all after the first paragraph in section 13, so that said section 13 shall read as follows:

'SEC. 13. The rights and privileges granted by this ordinance shall be granted for the term of twenty-five (25) years from and after its acceptance, and all rights hereunder shall cease after the expiration of such time.'

SEC. 2. This ordinance shall take effect and be in force from and after its passage."

87 XX.

Your orator further shows that the Hyde Park Gas Company was incorporated in the year 1871 and subsequently was, by the town of Hyde Park, under an ordinance passed and approved June 24, 1871, and a subsequent ordinance passed and approved November 25, 1871, amendatory thereof, and a supplemental ordinance passed and approved March 15, 1875, given permission and authority to lay gas mains, pipes, feeders and service pipes in any and all the streets, alleys, avenues, parks and public grounds of the town of Hyde Park, which town of Hyde Park was subsequently and in the year 1889 annexed to and became a part of the city of Chicago, and has so remained thence hitherto: that subsequent to the incorporation of said Hyde Park Gas Company and the passage of said ordinance as aforesaid, said company erected a gas plant and laid gas mains in a part of the territory of Hyde Park formerly comprised in the town of Hyde Park, and manufactured and sold gas until the month of January, 1898, when it disposed of its said property and plant to your orator as aforesaid; that the ordinance, amendatory ordinance, and supplemental ordinance granted by said town of Hyde Park to

said Hyde Park Gas Company were and are in the words and figures following, that is to say:

88 An ordinance granting rights to the Hyde Park Gas Company to construct and operate gas works in certain territory (passed and approved June 24, 1871).

"*Be it ordained by the board of trustees of the town of Hyde Park;*

SECTION 1. That permission and authority irrevocable be, and the same are hereby granted to the Hyde Park Gas Company of the town of Hyde Park, and State of Illinois to lay their gas mains, pipes, feeders and service pipes in any and all of the streets, alleys, avenues, highways, parks, squares and public grounds throughout said town, north of the center line of Sixty-seventh (67) street, upon the following conditions:

1st. Said company, when they shall open the ground to lay any pipe or for any purpose whatever, shall restore the grounds, streets, pavements and sidewalks to a condition as good as before they opened them, and satisfactory to the superintendent of public works or such other person as the board of trustees may appoint with all convenient dispatch.

2d. This permission shall be exclusive north of the south line of Sixtieth (60) street, for the period of fifteen years from this date: *Provided*, The works of said company of sufficient capacity to supply said exclusive territory with gas, shall be erected and gas furnished within eighteen months from this date, and the works shall be kept in operation and gas supplied and that no more than three dollars and fifty cents per thousand cubic feet shall be charged for gas to consumers.

3d. That no transfer of the privileges hereby granted shall ever be made to any other company or corporation, or to any individuals except as hereinafter provided, and the general office of said gas company shall be forever kept in said territory over which said exclusive jurisdiction is hereby given.

SEC. 2. Whenever within the period of fifteen years from this date, in the opinion of the board of trustees of the town of Hyde Park, it shall appear to be for the benefit and interest of the said town that the works, gas mains, pipes, machinery, fixtures and all other property, real, personal and mixed, belonging to said Hyde Park Gas Company and necessary and convenient for the purpose of manufacturing and supplying the said town and the citizens thereof

89 with gas, should be owned and operated and controlled by the public authorities of said town, the said Hyde Park Gas Company shall surrender ownership, possession and full control to the said board of trustees of said town of Hyde Park for the use and benefit of said town, all of said property, real personal and mixed, together with all works, machinery, fixtures, gas mains, pipes, feeders and materials used in the manufacture of gas then on hand upon the payment to said Hyde Park Gas Company of the actual cost thereof, adding thereto the sum of ten per cent. per annum interest, from the time of such expenditure until such payment is made, deducting therefrom such sums as may have been realized by said

company as net revenue from said work; such cost, interest and net revenue to be ascertained by three sworn commissioners, one to be appointed by said board of trustees, one by said Hyde Park Gas Company, and a third by a judge of the circuit court of the county of Cook, State of Illinois: Provided, that the board of trustees shall have no power to accept of this option and make such purchase except for the sole use of the town, and that the works shall be exclusively owned and operated by said town.

SEC. 3. The privileges, grants and franchises contained herein are hereby declared null and void unless the said Hyde Park Gas Company shall, before the expiration of thirty days from this date, file with the clerk of this board their written acceptance and assent to the conditions set forth in this ordinance.

See following ordinances.

Passed and approved November 25, 1871.

SEC. 6. Be it ordained by the board of trustees of the town of Hyde Park: That section 2 of the ordinance relating to the Hyde Park Gas Company, adopted by this board on the 24th day of June, A. D. 1871, be and the same is hereby repealed."

An ordinance granting further rights to the Hyde Park Gas Company (passed and approved March 15, 1875).

"SEC. 7. Be it ordained by the president and board of trustees of the village of Hyde Park: That permission and authority be, and the same are hereby granted to the Hyde Park Gas Com-
90 pany, of the village of Hyde Park, to lay their gas mains, pipes, feeders and service pipes in any and all of the streets, alleys, avenues, highways, parks squares and public grounds throughout said village south of the center line of Sixty-seventh street, upon the following conditions to wit:

1st. Said company, when they shall open the ground to lay any pipe, or for any other purpose whatever, shall restore the grounds, streets, pavements and sidewalk to a condition as good in all respects as before they opened them, and satisfactory to the superintendent of public works, or such person as the president and board of trustees of said village shall from time to time appoint. Such restoration to be made without unreasonable delay, and all excavations to be made in such manner that the public shall not be unnecessarily inconvenienced thereby.

2d. Said gas company to be responsible for any and all damages which may be occasioned by or result from the exercise of the permission or authority of this ordinance, conferred to or upon said company."

XXI.

Your orator further shows that the Mutual Fuel Gas Company was incorporated on or about April 25, 1889, for the purpose of manufacturing, distributing and selling gas, and the utilization of the same in the production of light, heat and power in the village of Hyde Park, and the said village of Hyde Park granted to Hank &

McClary, assignors of said Mutual Fuel Gas Company, the right, by ordinance, to lay down, operate and maintain gas mains and supply gas within the village of Hyde Park for both heating and lighting purposes; that thereafter said Mutual Fuel Gas Company erected works and engaged in the business of manufacturing and selling gas in a part of the town of Hyde Park, until it disposed of its property and plant to your orator, in the month of January, 1898, as hereinbefore alleged; that the ordinance granted to said Mutual Fuel Gas Company by said village of Hyde Park was, and is, in the words and figures following, that is to say:

91 An ordinance granting rights to Hank & McClary to construct, operate, and maintain gas works and to pipe oil in certain territory (passed, approved, accepted, and filed March 21, 1889).

"Be it ordained by the president and board of trustees of the village of Hyde Park:

SECTION 1. That permission and authority be, and are hereby granted to Charles D. Hank and Nelson A. McClary subject to the provisions hereinafter contained to construct, maintain and operate a system of works within the village of Hyde Park, to enable said Hank and McClary, or their assigns, to receive, produce and furnish for sale, natural and other gas and petroleum oil, or either of them; and to enable said Hank and McClary and their assigns to deliver such gas and oil to their customers, the right of way is hereby granted to them, along, upon and under all avenues, streets, alleys and public places, rivers and canals in said village, for the purpose of laying, operating, maintaining and repairing pipes, tubes, feeders and service pipes in connection with the said business of said Hank and McClary and their assigns: *Provided*, That this ordinance shall not grant authority to pipe oil north of 67th street in said village.

SEC. 2. Said Hank and McClary, or their assigns, shall do no permanent injury to any street, sidewalk, alley, avenue or public place, or in any manner unnecessarily disturb or interfere with any water pipes, sewer or gas pipe, telegraph or electric wires, cables or pipes now laid, or hereafter to be laid, by, or by authority of said village; that in laying their said pipes no greater distance than one-quarter of a mile shall be opened at any one time, and the work shall be done continuously and speedily prosecuted to completion under the direction of the superintendent of public works, or other proper officer of said village; that any streets, lanes, road- or alleys open for the purpose aforesaid shall be immediately restored to a condition equally as good as before opened by or for the benefit of said Hank and McClary and their assigns, by the superintendent of public works or other proper officer of said village, and the said superintendent of public works or other proper officer of said village shall make an estimate of the cost of restoring each section
92 not exceeding one-quarter of a mile, as aforesaid, to a condition equally as good as before; and payment of the amount of the said estimates shall be made by said Hank and McClary, or their assigns, to the comptroller of the said village before such

street, lane, road or alley shall be opened and in no case shall the village be held liable for any loss or damage that may occur in the restoring of such street, lane, road or alley as aforesaid; *Provided, however,* That if the said Hank and McClary and their assigns shall restore each section, as aforesaid, of said street, lane or alley to a condition satisfactory to the superintendent of public works, or other proper officer of said village within fifteen (15) days after the same shall have been opened by or for said Hank and McClary, or their assigns, then the amount of deposit as aforesaid shall be returned to said Hank and McClary, or their assigns, upon the order of the said superintendent of public works or other proper officer.

SEC. 3. Said Hank and McClary, or their assigns, shall put up all necessary barriers, lights and signals to prevent the happening of any accident in consequence of any opening or incumbrance of any street, alley, lane, avenues or other public ground in said village.

SEC. 4. Said Hank and McClary, or their assigns, shall be liable to, and by the acceptance of this ordinance, agree to pay and compensate the village of Hyde Park, or any private individual, owner or parties interested in any property adjacent to any street, avenue, alley or public ground opened or injured by them, for all damages such party may suffer caused by or resulting from negligence or want of proper care or skill in the construction of their works or lines of pipes, or in opening, incumbering, refilling or guarding any opening or construction of any street, alley, or public place in said village or growing out of the escape of any oil or gas contained in or conducted through such pipes or tubes of said company.

SEC. 5. Said Hank and McClary, or their assigns, shall be subjected to all general ordinances of the village of Hyde Park in regard to gas company or companies of a similar character or business or relating to the supply of petroleum oil, now in force or which may be hereafter passed.

SEC. 6. The village of Hyde Park, for itself and citizens reserves the right to put in sewerage, water and other pipes, and any and all improvements which it may deem necessary or proper, at any and all times, in its streets, alleys or public grounds without any
93 liability to said Hank and McClary o- their assigns, for so doing, and on reasonable notice said Hank and McClary, or their assigns, shall take proper care of their own pipes and property in such streets, alleys or public grounds.

SEC. 7. Whenever the board of trustees or their successors shall provide for the improvement of any street by paving or macadamizing the same, the said Hank and McClary, or their assigns, shall, within sixty (60) days after receiving notice from the department of public works, or other proper authority, cause pipes suitable for the supply of gas upon said street to be laid therein, including such main or service pipes, feeders, and house connections to the curb lines of said street and connecting with the building lots thereon, as may be necessary or proper. *Provided, however,* That said Hank and McClary, or their assigns, shall not be required to lay pipe in any such street unless ordered so to do by the board of trustees, unless the pipe so laid shall connect with the general system of said

Hank and McClary, or their assigns; and *provided, further*, that in case of the failure of said Hank and McClary, or their assigns, after such notice to lay such pipe and connections prior to such improvements, said Hank and McClary and their assigns shall not thereafter have the right to tear up said street nor any part thereof, except upon permission of the board of trustees or their successors, first specially had and obtained.

SEC. 8. Said Hank and McClary or their assigns, shall, unless prevented by due process of law, commence the erection of gas works within six months from the date of passage of this ordinance, and shall complete said works and furnish gas for fuel, power, light or heat within eighteen (18) months from said date, said works to be commenced and completed in good faith, to be of a permanent character and to have a capacity of not less than two hundred and fifty thousand (250,000) cubic feet of gas per day and to be intended to produce and supply to consumers regularly not less than said 250,000 cubic feet of gas per day. If said Hank and McClary or their assigns, shall fail to so commence said works and complete the same, and furnish gas within said periods of six (6) and eighteen (18) months or having commenced to supply gas, they shall, unless for causes beyond the control of said Hank and McClary, or their assigns, cease to supply gas for fuel, power, light or heat for a period of more than thirty (30) days, then the rights and privileges hereby granted shall cease and be of no more force and effect. *Pro-*
94 *vided, however*, That if said Hank and McClary, or their assigns, shall be delayed by any ordinance or resolution of the village of Hyde Park, then the period of any and all such delays shall be added to said periods of six (6) and eighteen (18) months.

SEC. 9. The pipes for oil and for high-pressure natural gas, that is having a pressure exceeding ten (10) pounds to the square inch shall be of wrought iron of the best material and with joints of the best known character for securing natural gas or oil. Said pipes shall be placed at least three (3) feet below the surface of the ground, and it is hereby made the duty of said Hank and McClary or their assigns, to provide an escape system to carry off superfluous natural gas or oil to relieve undue pressure and prevent explosion.

SEC. 10. Said Hank and McClary shall forfeit and pay to the said village of Hyde Park the sum of twenty thousand ($20,000) dollars, as liquidated damages in case they or their assigns shall fail to commence the erection of gas works within six (6) months from the date of the passage of this ordinance, or in case they shall fail to complete said works and furnish gas within eighteen (18) months from said date, as provided by section 8 hereof; and said Hank and McCleary shall, within sixty (60) days from and after the date of the passage of this ordinance, execute and file with the president of the village of Hyde Park, a good and sufficient bond in the penal sum of fifty thousand ($50,000) dollars, to be approved by the board of trustees, conditioned, that said Hank and McClary and their assigns, shall at all times save said village harmless from and on account of all injury to persons or property that may be caused by the acts of the said Hank and McClary, or their assigns, or their employés, or

by the escape of their gas or oil, and to make good and pay for all injury and damage to the property of the said village of Hyde Park that may be in anywise caused by the operations of the said Hank and McClary, or their assigns, hereunder, and further conditioned to pay the said village of Hyde Park said sum of twenty thousand ($20,000) dollars, liquidated damages provided for in this section.

SEC. 11. Said Hank and McClary, or their assigns, shall not charge or collect more than one dollar and twenty-five cents ($1.25) per thousand cubic feet for gas for illuminating purposes, not more than ninety cents ($.90) per thousand cubic feet for gas for heating purposes, with a rebate of twenty per cent. (20 per cent.) on said
95 above prices in case of payment on or before the twelfth (12th) day of the month next succeeding that in which such gas is used by consumers thereof. When said Hank and McClary, or their assigns shall furnish illuminating gas, the said Hank and McClary, or their assigns, shall supply gas light under uniform and sufficient pressure between sunset and sunrise of each day, and the equality of the same shall be as nearly uniform as practicable averaging for any one month not less than sixteen (16) sperm candles burning one hundred and twenty (120) grains per hour; to be determined by authorized photometrical tests, a five (5) foot burner being used, and provided the rights and privileges hereby granted are upon the express condition that said Hank and McClary, or their assigns, shall not charge the village of Hyde Park more than ninety cents ($.90) per thousand cubic feet for illuminating gas, and not more than sixty-five ($.65) per thousand cubic feet for heating gas.

SEC. 12. No transfer of the privileges hereby granted shall ever be made except by said Hank and McClary, but no transfer shall be made by their assigns, and should Hank and McClary, or their assigns, become a party to any trust or combination respecting the quantity or quality or price of gas or oil, *and* such transfer, combination or transaction shall work a forfeiture of the rights and privileges hereby granted.

SEC. 13. This ordinance shall take effect and be in force when and as soon as said Hank and McClary, or their assigns, shall file with the clerk of the village of Hyde Park their acceptance in writing thereof, together with their bond, as hereinbefore provided, and in case said Hank and McClary, or their assigns, shall not file said acceptance in writing, and said bond, within sixty (60) days after the passage and approval of this ordinance, then this ordinance shall be and become void and without force and effect."

XXII.

And your orator further shows unto your honors that the Calumet Gas Company was organized under the general incorporation act of the State of Illinois and obtained permission from the village of Hyde Park to lay down, maintain and operate pipes, mains
96 and feeders for a certain portion of the territory formerly comprised in the villege or town of Hyde Park, to wit, that territory south of the center line of Sixty-ninth street in the village of Hyde Park, which said territory was subsequently annexed to

and became a part of and has since remained a part of the city of Chicago. That said Calumet Gas Company thereafter manufactured and sold gas in part of said territory until said Calumet Gas Company disposed of its plant and property to your orator, in November, 1898, as hereinbefore set forth and alleged, and that the ordinance granted by the village of Hyde Park to said Calumet Gas Company was and is in the words and figures following, that is to say:

An ordinance granting rights to the Calumet Gas Company (passed and approved November 9, 1885).

"*Be it ordained by the president and board of trustees of the village of Hyde Park:*

SECTION 1. That permission and authority be and the same is hereby granted to the Calumet Gas Company, a corporation of the State of Illinois, to lay its gas mains, pipes, feeders and service pipes in any and all the streets, alleys, avenues, highway-, parks, squares and public grounds throughout the village of Hyde Park, south of the center line of Sixty-seventh street, upon the following conditions.

SEC. 2. Said Calumet Gas Company, when it shall open the ground to lay any pipes, or for any purpose whatever, shall without delay restore the grounds, streets, pavements and sidewalks to a condition as good as before they opened them and satisfactory to the superintendent of public works, or such other person as the board of trustees may appoint.

SEC. 3. The works of said Calumet Gas Company, shall be of sufficient capacity to supply said territory, and shall be commenced within six months, and gas furnished within eighteen months from the passage of this ordinance, and no more than two ($2.00) dollars per thousand cubic feet shall be charged to consumers; provided, however, that in case payment shall be made by said consumer on or before the twelfth day next after the month in which the
97 gas shall be consumed, a rebate of twenty-five (25) cents per thousand cubic feet shall be allowed to such consumer.

SEC. 4. The works of said Calumet Gas Company shall be located at a point south of the center line of Eighty-third street.

SEC. 5. The said Calumet Gas Company shall not have any privileges or rights in the territory bounded on the north by Ninety-fifth street, on the east by the center of Stony Island avenue, and on the south by the south line of Hyde Park, and on the west by the west line of Hyde Park.

SEC. 6. The said Calumet Gas Company, its successors and assigns, shall be subject to all the general ordinances of the village of Hyde Park in relation to gas companies, now in force, and which shall hereafter be in force in relation to the government of gas companies, and shall save and keep harmless the said village of and from all claims for damages growing out of any act on the part of said company, its successors or assigns, or their agents or servants.

SEC. 7. This ordinance shall be in force from and after its passage."

That said ordinance granted by said village of Hyde Park to said Calumet Gas Company was, on November 17, 1887, amended by an ordinance in the words and figures following, to wit:

An ordinance amending an ordinance granting rights to the Calumet Gas Company (passed, approved, and filed November 17, 1887; accepted November 18, 1887).

"Be it ordained by the president and board of trustees of the village of Hyde Park: That section 1 of an ordinance granting rights and privileges to the Calumet Gas Company, passed November 9, 1885, be and the same is hereby amended to read as follows:

That permission and authority be and the same is hereby granted to the Calumet Gas Company, a corporation of the State of Illinois, to lay its mains, pipes, feeders and service pipes, in any and all the streets, alleys, avenues, highways, parks, squares and public grounds throughout the village of Hyde Park."

98 XXIII.

Your orator charges that in and by said statute of the State of Illinois, by virtue of which said Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Illinois Light, Heat and Power Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company, severally, disposed of their manufacturing plants and pipes, mains and feeders aforesaid to your orator, it is provided that any corporation purchasing or leasing the property of the company or companies, or into which any company or companies are consolidated and merged, shall be, at the time of such purchase, lease or merger, in the actual business of furnishing gas to consumers, and shall be subject to the following provisions: Such corporation shall not increase the price charged by it for gas of the quality furnished to consumers during any part of the year immediately preceding such purchase or lease, or such consolidation and merger, and shall furnish gas as good in quality as it furnished previous to such purchase or lease, or such consolidation and merger.

Your orator charges the fact to be that during the year immediately preceding the acquisition by your orator of the plants, pipes and mains of the Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Illinois Light, Heat and Power Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company, as aforesaid, your orator was extensively engaged in the actual business of furnishing gas to consumers, in the city of Chicago, and that your orator charged and received for all illuminating gas sold by it the net rate or price of one dol-
99 lar per thousand cubic feet; that since the acquisition of said plants and property aforesaid your orator has uniformly charged the same net rate or price for all illuminating gas sold by

it in the city of Chicago, and the gas so supplied and sold by your orator has been, as matter of fact, better in quality and of higher candle-power than the gas theretofore sold by the companies, the plants, pipes and mains of which, severally, were as aforesaid acquired and taken over by your orator; and your orator charges, as matter of law, that the price or rate thus fixed was a fixing and regulating by the State of Illinois of the price or rate to be charged by your orator for all gas supplied by your orator subsequent to the acquisition by your orator of the manufacturing plants, pipes and mains of said gas companies aforesaid.

XXIV.

Your orator further shows that from and after the acquisition and taking over by your orator of the property aforesaid from said Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Illinois Light, Heat and Power Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company, your orator has furnished and supplied to consumers of gas formerly in part supplied by said companies, severally, all the gas required by said consumers; that all the streets, avenues, highways, public squares and places within the city of Chicago, except those lighted by the said city by means of the municipal electric lighting plant, have been lighted by means of the gas manufactured and distributed by your orator; that your orator has furnished a gas of higher candle-power than was ever furnished by any of said companies, the property of which companies was so acquired and taken over as aforesaid by your orator; that your orator has extended, enlarged, improved and bettered the plants, mains and property it acquired from said Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Illinois Light, Heat and Power Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company; that it has connected the pipes, mains and systems so as aforesaid acquired by it, with the pipes and mains that were, at the time of such acquisition, the property of your orator, making all necessary extensions of said pipes and mains for that purpose, and extended, connected, enlarged and improved the same, with the sole purpose and object of improving the service rendered and to be rendered by your orator to the city of Chicago and the inhabitants thereof, consumers of gas; that in extending, enlarging, improving, completing and bettering its system of gas mains, pipes, feeders and appliances, your orator has always and in every case proceeded under and acted upon and by virtue of the franchise, power and authority contained in its charter and by the consent of the city of Chicago aforesaid, and that in any of the acts which your orator has done as aforesaid since the acquisition by your orator of the property and plant of said several

companies as aforesaid your orator has never acted under any of the powers, franchises or privileges granted to or held by said several companies or any or either of them, and that in putting down, maintaining and operating works, plants, mains, pipes, feeders and appliances since August 5, 1897, your orator has not availed itself of any of the powers or privileges granted to the said Chicago Gas Light and Coke Company, or to the other companies aforesaid, or any or either of them, the property of which companies was so as aforesaid acquired and taken over by your orator; but, on the contrary, your orator charges the fact to be that every act and thing done by the People's Gas Light and Coke Company since
101 August 5, 1897, in laying, maintaining, using, conducting and operating its plants and property, gas mains, pipes, feeders and appliances and appurtenances, and in carrying on its business and affairs, throughout the city of Chicago, in the way of manufacturing, distributing and selling gas to the city of Chicago and to the inhabitants thereof, consumers of gas, has been solely and exclusively under and by virtue of the power and authority, franchise and privilege, granted to your orator by its charter aforesaid and by and with the consent of the city of Chicago.

XXV.

Your orator further shows that in addition to the People's Gas Light and Coke Company and the gas companies, the properties of which, severally, were acquired by your orator as aforesaid, there were then and are now other gas companies engaged in the manufacture, sale and distribution of gas in the city of Chicago, as well as a number of electric light companies engaged in distributing light to the inhabitants of the city of Chicago, consumers thereof; that said city of Chicago has built, and maintains and operates a considerable electric light plant, by means of which a part of the streets of said city are lighted.

XXVI.

Your orator further shows that the city of Chicago had full knowledge of the acquisition and taking over by your orator of the property aforesaid of said other gas companies heretofore named, and consented to the acquisition and taking over of said property by your orator, and in various ways approved, ratified and confirmed the acquisition and taking over of said property and the use thereof by your orator as aforesaid, under your orator's charter; and in this connection your orator states the fact to be that in the year 1899 your orator and the city of Chicago entered into a certain agreement in the words and figures following, that is to say:

102 "An agreement, made this twentieth day of July, 1899, between the City of Chicago and the People's Gas Light and Coke Company (herein called the People's Company).

Whereas, the city of Chicago desires to arrange for a continuance of the lighting of the streets and other public places of the city for the remainder of the current year, upon the same terms as those

upon which said lighting was done in the year 1898, and to secure the benefit of rebates upon the price of gas furnished, as hereinafter set forth:

A certain agreement for the lighting of streets and other public places was entered into on the 17th day of June, 1891, between the City of Chicago on the one part, and the People's Company and certain other gas companies, viz: the Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company, the Hyde Park Gas Company, the Lake Gas Company and the Suburban Gas Company, on the other part, and said agreement of June 17, 1891, was extended under certain other contracts subsequently made by the city of Chicago, and expired on December 31, 1897, and is no longer in force or effect. In August, 1897, the several other gas companies last above mentioned, excepting the Hyde Park Gas Company, were consolidated and merged into the People's Company, and subsequently, on January 10, 1898, there was also consolidated and merged into the People's Company said Hyde Park Gas Company. For the year 1898 no written contract was made by the city of Chicago with the People's Company for gas, but the People's Company furnished gas to the city upon substantially the following terms: For street lamps supplied with gas of not less than 24-candle power, through burners consuming four feet per hour, lighted in accordance with the time-table of 3,786 hours and 11 minutes per annum, and including the lighting, cleaning, extinguishing, furnishing and placing glass for lamps,
103 repairing of all attachments except lamp frames, likewise the labor and alcohol for thawing, repairing stiff keys, furnishing and keeping in repair lamp-cocks, nipples, burners, tips, etc., the sum of twenty dollars per lamp, provided the bills therefor were paid within thirty days from the end of each quarter of the year, or judgment therefor was promptly obtained, where cash w-s not available. For gas of not less than 24-candle power furnished in public buildings and places, other than for street lamps, the price of $1.25 per thousand cubic feet, with a rebate of twenty-five cents per thousand cubic feet on bills paid within thirty days after the same were rendered.

There was credited by the People's Company to the city of Chicago upon the amount owing by the city of Chicago to the People's Company, for the year 1896, as aforesaid, three and one-half (3½) per cent. upon the gross receipts from the sales of gas by the People's Company during said year, including the gross receipts from the operations of the properties of said companies consolidated, as aforesaid, with the People's Company. For the first three months of the year 1899 the People's Company has been paid for gas furnished and work done at the same prices as for the year 1898, and the People's Company has paid, or allowed as a rebate upon the bills for such three months, the 3½ per cent. of its gross receipts from the sales of gas during such period, including the receipts from the operations of the properties of said companies so consolidated, as aforesaid, with the People's Company.

And whereas, the city council of the city of Chicago did at its

regular meeting, held July 6th, 1899, pass the following order, to wit:

'*Ordered*, That the mayor and comptroller be and they are hereby authorized and directed to arrange for the continuance of the lighting of the streets and other public places of the city of Chicago for the remainder of the current year upon the same terms with those upon which said lighting was done in the year 1898. And it is further

104 *Ordered*, That said mayor and said comptroller be and they are hereby authorized and directed to permit judgments to be entered against said city of Chicago for the cost of said lighting in excess of the amount provided therefor in the last annual appropriation bill,' and this agreement is made under and in pursuance with the authority and direction in said order contained;

Now, therefore, in consideration of the premises, this agreement witnesseth:

1. The People's Company shall continue to light the streets and public buildings and other public places of the city of Chicago for the remainder of the year 1899 upon the same terms as for the year 1898, as above set forth.

2. The People's Company shall pay or credit upon the amount payable by the city of Chicago hereunder the amount of 3½ per centum upon the gross receipts of the People's Company, during the year 1899, from the sales of gas, and there shall be included in the said gross receipts the receipts from the operations of the properties of each of said gas companies which have been heretofore consolidated with the People's Company, as aforesaid. The payment or allowance of said 3½ per centum of gross receipts shall cease and discontinue if the existing franchises of said People's Company, or of any of said gas companies, so consolidated with the People's Company, shall not be recognized by the city of Chicago, or if the same, or any of them, shall be attacked by or at the instance of said city, or if the People's Company shall be prevented by the city of Chicago from extending its main in territory which has been, or may be annexed to said city. The city of Chicago shall have the right, at any time, to examine the books and accounts of the People's Company, to verify the statement of the People's Company as to the amount of said 3½ per cent. of its gross receipts from the sales of gas for

105 the year 1899; there shall be a statement furnished quarterly to the mayor of the city of Chicago by the president or secretary of said gas company, verified under oath of the officers making the same, showing the gross receipts of said company as aforesaid.

The Chicago Economic Fuel Gas Company having also been consolidated with the People's Company, there shall be paid to the city of Chicago, or credited upon money owing by the city of Chicago to the People's Company, the five per centum of the receipts from the sale of natural gas as specified in the ordinance granted by the city of Chicago to said Chicago Economic Fuel Gas Company.

4. The city of Chicago shall pay in cash, on or before August 1st, 1899, the net amount due the People's Company hereunder for the months of April, May and June, 1899. The net amount which will

be due for the months of July, August and September shall be payable on or before November 1st, 1899, and in case the city has not sufficient funds available to pay said amount, the People's Company shall receive a judgment therefor of a court of competent jurisdiction, at the term of such court at which suit may be instituted therefor by the People's Company. The net amount which will be due for the months of October, November and December, 1899, shall be payable on or before February 1st, 1900, and if the city of Chicago has not sufficient funds available to pay said amount the People's Company shall receive a like judgment therefor, at the term at which suit may be brought for the same. In the event that the People's Company shall not obtain such judgments, or either of them, for such deficiency or deficiencies, upon suit being brought therefor, as aforesaid, the People's Company shall be entitled forthwith to discontinue the supply of gas to the city of Chicago.

In witness whereof, the City of Chicago has executed this agreement, by its mayor and city comptroller, in that behalf duly
106 authorized, and the People's Gas Light and Coke Company has caused this agreement to be executed by its president, and its corporate seal to be hereunto attached, duly attested by its secretary.

CITY OF CHICAGO,
(Signed) By CARTER H. HARRISON, *Mayor.*

WILLIAM D. KERFOOT,
City Comptroller.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY,
By C. K. G. BILLINGS, *President.*

Attest:
[SEAL.] L. A. WILEY, *Secretary.*"

XXVII.

Your orator further shows that since August 5, 1897, the city of Chicago, by the common council thereof, has recognized the right of your orator to acquire and take over the property of said gas companies, and to use, operate and extend the same under and by virtue of your orator's charter, and has evidenced its acquies-ence in and consent and approval of such acquisition and taking over, use, conduct and operation thereof, by a large number of affirmative acts wholly inconsistent with the claim, if it should now be put forth, that said property was not lawfully acquired and taken over, and ever *said* has been maintained and used and operated by your orator, or that said property was acquired without the knowledge and consent of said city of Chicago; that among said acts of recognition and consent are the following:

1. At a meeting of the city council of the city of Chicago, held May 2, 1898, the following order was passed:

"Ordered, that the commissioner of public works be and he is

hereby directed to notify the People's Gas Light and Coke
107 Company to put in gas stubs on Cornelia street, from Western avenue to Rockwell street, and on Cortez street, from Western avenue to California avenue."

2. At a meeting of said city council, held July 6, 1898, the following order was passed:

"Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to place gas mains in Blucher street, from Lill place to Wood street."

3. At a meeting of said city council, held July 11, 1898, the following order was passed:

"Ordered, That the commissioner of public works be and he is hereby directed to order the People's Gas Company to lay their main and other pipes in Beach court, south of Irving Park boulevard, in order that the contractor may proceed with his work."

5. At a meeting of said city council, held November 6, 1899, the following order was passed:

"Ordered, That the commissioner of public works be and he is hereby directed to have the People's Gas Light and Coke Company lay the service pipes and mains in Evanston avenue, from Devon avenue north to city limits."

6. At a meeting of said city council, held November 20, 1899, the following order was passed:

"Ordered, That the People's Gas Light and Coke Company be and is hereby ordered to lay gas mains in the following streets, to wit, Herndon street, from Beldon avenue south to Garfield avenue north."

9. At a meeting of said city council, held January 3, 1900, the following order was passed:

"Ordered, The People's Gas Light and Coke Company is hereby directed and instructed to lay gas main in Ridgeway avenue, from Armitage avenue to Courtland avenue."

10. At a meeting of said city council, held January 8, 1900 the following order was passed:

"Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke
108 Company to lay gas mains in Ridgeway avenue, from Armitage avenue to Courtland street."

11. At a meeting of said city council, held February 5, 1900, the following order was passed:

"Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay their gas mains in Turner avenue, between Twenty-third and Twenty-sixth streets, as the street is now being graded, preparatory to paving."

12. At a meeting of said city council, held June 25, 1900, the following order was passed:

"Ordered, That the commissioner of public works order the People's Gas Light and Coke Company to lay gas main on Central

Park avenue, between Douglas boulevard and Twelfth street before street is paved."

13. At a meeting of said city council, held June 25, 1900, the following order was passed:

"Ordered, That the People's Gas Light and Coke Company be and they hereby are directed to lay gas mains and pipes in Wrightwood avenue, at all places now in process of being paved, and not already supplied with gas mains and pipes."

14. At a meeting of said city council, held July 9, 1900, the following orders were passed:

"Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains in Melrose street, from Kimball avenue to Drake avenue, and in School street, from Kimball avenue to 500 feet west."

"Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas main at once in Milwaukee avenue from Allen avenue to Belmont avenue."

15. At a meeting of said city council, held November 12, 1900, the following order was passed:

"Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains in Monticello avenue, between Armitage avenue and Courtland street."

109 16. At a meeting of said city council, held January 7, 1901, the following order was passed:

"*Ordered*, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains in North Kedzie avenue, between School street and Roscoe street."

17. At a meeting of said city council, held February 18, 1901, the following order was passed:

"*Ordered*, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains at once in the following-named streets:

North Springfield avenue, from Irving Park boulevard to West Berteau avenue.

North Avers avenue, from Irving Park boulevard to West Montrose avenue.

North Harding avenue, from Irving Park boulevard to West Cullom avenue.

North Ridgeway avenue, from Elston avenue to West Montrose avenue.

North Lawndale avenue, from West Belle Plaine avenue to West Montrose avenue.

North Monticello avenue, from Irving Park boulevard to West Montrose avenue.

North 40th avenue, from Elston avenue to West Montrose avenue."

18. At a meeting of said city council, held March 11, 1901, the following order was passed:

"*Ordered*, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains in Elston avenue, from Montrose avenue to North 43d avenue; in Hamlin avenue, from Irving Park boulevard to Montrose avenue, and in Melrose street, from Elston avenue to California avenue."

110 XXVIII.

Your orator further shows that it paid to the city of Chicago, in cash, upwards of $300,000 under said agreement dated July 20, 1899, and that it has in each year since August 5, 1897, paid to said city of Chicago, the 5 per centum of the receipts from the sale of natural gas specified in the ordinance granted by said city of Chicago to the Chicago Economic Fuel Gas Company, and that it has at heavy expense, in all things complied with the orders and directions of the city council of the city of Chicago respecting the laying down of pipes, mains and services, and the supplying of gas, as specified in the orders set out in the twenty-seventh paragraph of this your orator's bill of complaint; which pipes, mains and services have been laid in all divisions of the city of Chicago; and your orator charges that, relying upon its charter rights, and upon the recognition thereof and acquiescence therein by the city of Chicago, your orator has from time to time expended large sums of money in acquiring lands in various sections of the city of Chicago, upon which it has placed its retorts, buildings, holders and other apparatus since August 5, 1897, and has expended large sums of money in laying down gas mains, pipes, feeders and other appliances and appurtenances throughout the city of Chicago, and in all sections thereof, and in maintaining, improving and extending its system of pipes, mains, feeders and plants, and in carrying out and performing the orders and directions contained in the said several resolutions, orders and ordinances of the city council of the city of Chicago, hereinbefore set forth, and otherwise, in connection with perfecting its system of mains, plant, pipes, feeders and appurtenances; that since August 5, 1897, said city of Chicago has issued to your orator upwards of seventy-five thousand permits authorizing your orator to make excavations in the public streets throughout the city of Chicago, and in
111 all divisions thereof, for the purpose of laying down pipes, mains, feeders and service pipes, and in repairing, renewing, extending, enlarging, improving and completing the same; and your orator charges that each and every permit so issued by the city of Chicago to your orator since August 5, 1897, was and is a separate and distinct recognition and affirmance by the city of Chicago of the right by your orator to maintain and use the pipes, mains, feeders and appliances of your orator in the streets, alleys, highways, public ways, places and squares throughout the city of Chicago; and in this connection your orator shows and states the fact to be that there are hundreds of miles of gas pipes in the streets of the city of Chicago acquired as aforesaid by your orator from said Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the

Suburban Gas Company, the Lake Gas Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company, that are no longer available for use in distributing gas, by reason of the fact that they were laid at an early day, were small in size, and are, by reason of wear and decay, no longer available, nor can they be, nor are said pipes now, used in distributing gas to consumers; that in all such cases your orator has put down under authority of its charter and ordinance from the city of Chicago, and under authority of the permits issued by the city of Chicago to your orator, new and enlarged pipes and mains, which pipes and mains your orator now maintains, uses and operates under the power and authority contained in the charter granted to it by the State of Illinois, and the consent of the city of Chicago, as aforesaid, in supplying gas to consumers, residents of the city of Chicago, and to the city of Chicago; that since acquiring the plants, pipes and mains of the Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the
112 Suburban Gas Company, the Lake Gas Company, the Chicago Economic Fuel Gas Company, the Illinois Light, Heat and Power Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company, and the Calumet Gas Company, the constant aim and purpose of your orator has been to extend and enlarge the same, and the system of plants, pipes, mains and feeders of your orator, and to improve and better the service of furnishing gas rendered and to be rendered by your orator to the residents of the city of Chicago, consumers of gas, and to the city of Chicago. That your orator is constantly engaged in replacing and renewing pipes and mains heretofore laid in the streets of the city of Chicago, either by your orator or by the companies whose property was acquired by your orator, with larger pipes and mains, in order to keep pace with the increased and constantly increasing demands made upon your orator to supply the residents of Chicago, and the city of Chicago, with gas; and your orator has been constantly so engaged since August, 1897, (all of which is evidenced by the large number of permits for opening the streets of Chicago issued to your orator by the city of Chicago as aforesaid); that for nearly fifty years continuously, your orator has been, and now is, furnishing gas to consumers thereof in Chicago, and to the city of Chicago, by virtue of its own right and authority and under its own franchises, and on the enlargement of its system, plants and property, by the acquisitions aforesaid, it continued to manufacture and supply gas as theretofore, under the power and authority contained in its charter, as aforesaid, and the consent of the city of Chicago, and not by virtue of the franchise or in discharge of any duty of any or either of said companies, the property and plant of which was acquired by your orator as aforesaid; that your orator is the identical corporation and entity created by said charter aforesaid, and is the corporation which, under the powers and privileges contained in said charter and by and

with the consent of the city of Chicago as aforesaid, is furnish-
113 ing gas to the city of Chicago, and to the consumers of gas resident in said city of Chicago; and your orator charges the fact to be that it would be practically impossible at this time to distinguish the pipes, mains and feeders laid and placed by your orator and those acquired by your orator from the Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company, and the Calumet Gas Company, because many hundred miles of the pipes so acquired have been taken up and removed by your orator because no longer serviceable, and no longer adapted to the demands of the service at the place or places where the same were originally laid; that upwards of five hundred miles of gas mains and pipe have been newly laid by your orator in all sections and divisions of the city of Chicago since August 5, 1897, in extending, enlarging, improving and bettering the plant and system of your orator, until, at this time, the system of pipes, mains, feeders and appliances of your orator has been largely, if not entirely, remodeled, relaid and improved, and it has at this time become and is practically impossible to determine what pipes, mains and feeders, if any such there be remaining, were acquired from said Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company; that while it is undoubtedly true that many miles of such pipes still remain in the streets of the city of Chicago, it is likewise true that in places your orator has taken up for long distances the mains and pipes originally laid, and put down in lieu thereof other and larger pipes and mains of greater capacity and improved quality, and conducted through the same the gas manufactured by your orator.

114 And in this connection your orator further shows, and charges the fact to be, that the entire system of pipes, mains and feeders acquired as aforesaid by your orator from the Consumers' Gas Company, except as the same has been changed, cut out, enlarged, relaid, replaced or improved by your orator since August 5, 1897, was connected with the system of pipes, mains and feeders acquired by your orator, from the Chicago Economic Fuel Gas Company, and thereafter by your orator used solely in the distribution of natural gas, for fuel and heating purposes; that substantially all of the system of pipes, mains and feeders acquired as aforesaid by your orator from the Equitable Gas Light and Fuel Company, except so far as the same has been changed, cut out, enlarged, relaid, replaced or improved by your orator subsequent to August 5, 1897, has likewise been devoted exclusively to the distribution by your orator of said natural gas for fuel and heating purposes, and that everything done by your orator in the way of enlarging, relaying, replacing, putting down, extending, changing and improving

said pipes, and mains, plants, feeders and appliances has been so done by your orator under the power and authority contained in its charter and franchise, and all in pursuance of the general plan and project of your orator to extend, enlarge, improve and better its system of mains, and more fully to carry out and perform the purpose and object for which it was incorporated by the State of Illinois, and being generally to furnish and supply the entire city of Chicago and all the inhabitants thereof with gas, all of which has been done by your orator in reliance upon its charter powers and the consent of the city of Chicago and in reliance upon the recognition of and acquiescence by the city of Chicago in the acquisition and operation by your orator of the plant and property so as aforesaid by your orator acquired from the corporations aforesaid, and in reliance upon the large sum of money paid by your orator to the city of Chicago under said agreement, dated July 20, 1899; and your orator further charges that in order to enable your orator to
115 comply with the duties and obligations on your orator by its charter imposed, and in extending and enlarging said mains and system, your orator has been obliged to rebuild and enlarge all of the manufacturing plants so as aforesaid acquired by your orator from the Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Chicago Economic Fuel Gas Company, the Illinois Light, Heat and Power Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company, and has acquired additional real estate and built and constructed additional buildings thereon, and installed in the buildings so erected, and in the buildings acquired as aforesaid, new and improved machinery and appliances for the production of gas, and generally your orator has substantially rebuilt all of said plants and relaid or replaced substantially all of the gas pipes and gas mains in the city of Chicago acquired by your orator from said Chicago Gas Light and Fuel Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company, and has expended in doing said work, and in extending, enlarging, repairing and connecting its system of pipes, mains, services and feeders, upwards of five millions of dollars; and your orator insists that it would be inequitable and unjust to permit the city of Chicago to now claim that it has never given its consent to the acquisition of such property by your orator, and the operation thereof under the powers and privileges in and by the charter of your orator granted to it, if such consent should be held to be material, and your orator insists that the city of Chicago is now estopped to set up any such claim or pretense.

Your orator further shows unto your honors that at the
116 time of the acquisition and taking over by your orator of said plants, pipes, mains and property from said other gas companies as aforesaid, said companies were indebted upon legal

obligations of said companies, severally, all of which obligations were secured by mortgages or deeds of trust upon the property, severally, of said companies, executed and delivered by said companies, severally. That the amounts of said indebtedness as aforesaid, secured by mortgage or deed of trust in every case, were as follows:

First-mortgage five per cent. bonds of the Chicago Gas Light and Coke Company, dated July 1, 1887, and due July 1 1937, $10,000,000.

First-mortgage six per cent. bonds of the Equitable Gas Light and Fuel Company of Chicago, dated 1885, and due July 1, 1905, $2,000,000.

First-mortgage five per cent. bonds of the Consumers' Gas Company, dated December 1, 1886, and due December 1, 1936, $4,246,000.

First-mortgage seven per cent. bonds of the Illinois Light, Heat and Power Company, dated November 18, 1885, and due November 1, 1915, $500,000.

First-mortgage six per cent. bonds of the Lake Gas Company, dated July 1, 1885, and due July 1, 1915, $300,000.

First-mortgage five per cent. bonds of the Chicago Economic Fuel Gas Company, dated January 2, 1893, and due January 1, 1916, $2,500,000.

Thereafter, and on or about the first day of September, 1897, your orator executed and delivered its mortgage or deed of trust to the Farmers' Loan and Trust Company, a corporation organized and existing under the laws of the State of New York, as trustee, called its refunding mortgage, to secure its refunding five per cent. gold bonds, amounting in the aggregate to the sum of $40,000,000, issued and to be issued, of which amount $29,046,000 of bonds were reserved to take up the bonds theretofore issued by said Chicago Gas Light and Coke Company, the Equitable Gas Light and
117 Fuel Company, the Consumers' Gas Company, the Illinois Light, Heat and Power Company, the Lake Gas Company, the Chicago Economic Fuel Gas Company, as aforesaid, and certain other bonds theretofore issued by your orator, then outstanding, aggregating $9,500,000, as follows:

First-mortgage six per cent. bonds of your orator, dated November 9, 1874, and due November 1, 1904, aggregating $2,100,000;

Second-mortgage six per cent. bonds of your orator, dated December 5, 1874, and due December 1, 1904, aggregating $2,500,000;

First consolidated six per cent. bonds of your orator, dated April 1, 1893, and due April 1, 1943, aggregating $4,900,000.

That to secure said issue of bonds, your orator executed and delivered its mortgage or deed of trust, as aforesaid, and conveyed all and singular its property, of every kind and nature, including as well the plants, machinery, pipes, mains, feeders and appliances so as aforesaid acquired by your orator from said other gas companies. A copy of said mortgage, and of the bonds secured thereby, is hereby referred to with like effect as if herein set out at length.

And your orator charges the fact to be that after the execution and delivery of said refunding mortgage aforesaid, your orator issued, pursuant to the terms of said instrument, $2,500,000 of bonds secured

thereby, for the purpose of taking up and retiring the $2,500,000 of first-mortgage five per cent. bonds of the Chicago Economic Fuel Gas Company, dated January 2, 1893, above mentioned, and your orator charges the fact to be that said refunding mortgage, shortly after its execution and delivery, and before the issuance of any bonds thereunder, was filed for record in the office of the recorder of deeds of Cook county, Illinois.

Your orator further shows unto your honors, and charges the fact to be that in issuing said refunding mortgage, and to raise
118 money for the purpose of extending, enlarging, improving and bettering its system of plants, mains, pipes, feeders and appliances, and for the purpose of construction, maintenance, repair, reconstruction and operation of its various lines of pipes, mains, feeders and appliances, and for the purpose of taking up and retiring the bonds issued by the companies, the property of which companies was so as aforesaid by your orator acquired, your orator relied upon the contract in its charter contained, between your orator and the People of the State of Illinois, that the common council of the city of Chicago should in no case be authorized to compel your orator to furnish gas at a less rate than $3 per thousand cubic feet; that, as above set out, many of said outstanding bonds will be due and payable within the next two years, and it will be necessary for your orator to borrow money upon the faith of said refunding bonds to assist in the payment and retirement of said bonds aforesaid as they mature; that by the mortgages securing all of said outstanding bonds, all the property, rights, privileges and franchises of the companies issuing said bonds, including the contract rights created in and by the charter of your orator as aforesaid, together with all the income, issues, and profits arising therefrom, have been mortgaged to trustees therein named, for the use and benefit and security of the holders of such bonds; that said bonds have been sold to parties purchasing the same in the full faith and belief that the city of Chicago was prohibited by said charter from compelling your orator to furnish gas at a less than $3 rate per thousand cubic feet; that said provision in said charter is a right of property, and the action of the city council of the city of Chicago, in passing the ordinance hereinafter set out, is an impairment of the obligation of said contract as against the rights of the holders of said bonds, under and by virtue of the security created by said various mortgages or deeds of trust.

119 XXIX.

Your orator further shows that, notwithstanding the privileges and powers conferred upon your orator by its charter, as aforesaid, and notwithstanding the agreement contained in said charter, that the common council of the city of Chicago should in no case be authorized to compel your orator to furnish gas at a net rate less than three dollars per thousand feet, and notwithstanding the contract thereby existing by and between your orator and the People of the State of Illinois, the said common council of the city of Chicago, as representing said city, did, recently, arbitrarily, unlawfully and un-

warrantably, claiming that it had the power to regulate the price of gas sold and distributed by your orator to the city of Chicago and to residents thereof, and without investigation or judicial proceedings of any kind, and without giving or permitting a hearing of any sort to your orator, on or about the 15th day of October, 1900, pass a certain ordinance, which said ordinance is in the words and figures following, to wit:

"*Be it ordained by the city council of the city of Chicago:*

SEC. 1. That no corporation, company or companies, firm or persons manufacturing, selling, supplying or distributing gas in the city of Chicago for illuminating or for fuel purposes shall charge, exact, demand or collect from any consumer thereof more than the sum of seventy-five (75) cents per one thousand (1,000) cubic feet of gas consumed or used. Said sum of seventy-five (75) cents per one thousand (1,000) cubic feet of gas shall be the net price charged, exacted, demanded or collected from each consumer. Manufactured gas so furnished shall afford a light of not less than twenty (20) candle power, to be measured and ascertained at the place of consumption in said city by the most modern appliances known to science for measuring the candle-power of illuminating gas.

Provided, however, That any corporation, company or companies, firm or person distributing or selling gas for fuel or illuminating purposes in the city of Chicago may, in addition to said seventy-five (75) cents per one thousand cubic feet of gas furnished to such consumer, add a penalty of not exceeding ten (10) cents for each one thousand (1,000) cubic feet of gas so supplied to such consumer for delinquency or non-payment of the bill, statement or charge of said corporation, company or companies, firm or person after ten days from the date at which said bill, statement or charge is made and furnished to such consumer.

SEC. 2. That any company, corporation, person or persons who shall remove any meter or meters from the house, store, factory or premises of any consumer of gas in the city of Chicago, against the will and consent of any such consumer of gas who is willing to pay for gas furnished him, it or them by any such company, corporation, person or persons, and tenders the amount due at the price established and fixed in section 1 of this ordinance, shall be subject to a penalty of not less than twenty-five (25) nor more than two hundred ($200) dollars for each and every offense; *Provided, however*, That any company, corporation, person or persons furnishing gas to consumers in the city of Chicago shall have the right to remove any meter or meters for the purpose of repairing the same, on condition that such meter or meters so removed shall be replaced or a new one substituted in its place within twenty-four (24) hours of the time of the removal of any such meter or meters.

SEC. 3. That any company, corporation, person or persons who shall, in violation of the provisions of the preceding sections, charge or require the city of Chicago, or any citizen thereof, or any consumer of gas therein, to pay for gas furnished to it or them, or either of them, a sum in excess of seventy-five (75) cents per thousand cubic

feet, or who shall furnish to the said city of Chicago, or any citizen thereof, manufactured gas less than twenty (20) candle power shall be subject to a penalty of not less than twenty-five dollars ($25), nor more than two hundred dollars ($200) for each and every offense.

SEC. 4. This ordinance shall be in full force and effect from and after the 2d day of January, A. D. 1901; *Provided*, That said ordinance shall not go into effect until it has been duly published, as provided by law."

121 XXX.

Your orator further shows that the said ordinance was not afterwards vetoed, repealed, modified or amended, and remains in full force and effect as the enactment of the common council of the city of Chicago, and of the city of Chicago. And your orator charges that the said defendant, The City of Chicago, claims that under and by virtue of the provisions of the charter of your orator and under and by virtue of the general police powers claimed by the city of Chicago to have been granted to it by the State of Illinois, the city of Chicago has the right and power to regulate and fix the price at which gas shall hereafter be furnished by your orator to the citizens of the city of Chicago and to the city of Chicago, and that the said city of Chicago so claims the said right regardless of the privileges and powers conferred upon your orator by its charter from the State of Illinois, and of the contract therein embodied by and between your orator and the People of the State of Illinois, and regardless of the inhibition in said charter contained, prohibiting the city of Chicago from compelling your orator to furnish gas at a less rate than three dollars per thousand cubic feet.

Your orator further shows that the city of Chicago announces, and has threatened, that it will forthwith proceed to enforce the said ordinance against your orator in the event of any violation of the terms thereof by your orator; and your orator further shows that it has been advised by sundry citizens of the city of Chicago that in the event of the failure of your orator to comply with the terms of said ordinance so passed by the said city of Chicago as aforesaid, they will immediately take steps, by means of prosecution in the courts of the State of Illinois, to enforce against your orator
122 the penalties denounced in said ordinance upon a refusal by your orator to comply with the terms of said ordinance, in respect to the price charged by your orator for gas, as aforesaid.

XXXI.

Your orator further shows that it has now upwards of three hundred thousand customers in the city of Chicago, in addition to the city of Chicago itself, to which your orator is daily selling and distributing gas, and that during the years 1900 and 1901 your orator sold and delivered to such customers, at the rates specified, an enormous amount of gas in each year, aggregating many hundred million cubic feet in each year, and that on the date of the passage of said ordinance your orator was engaged in selling illuminating gas to such customers, including the city of Chicago, at the net rate of one

dollar per thousand cubic feet, which said net rate of one dollar per thousand cubic feet your orator had fixed as the price of its illuminating gas sold and delivered in the city of Chicago, and which said rate so fixed by your orator had been charged by your orator in the city of Chicago for upwards of four years last past, and which rate, in the judgment of your orator, was a just, fair and proper rate for your orator to charge for its illuminating gas as aforesaid.

And your orator further shows that many of its said consumers are people of small means and are financially irresponsible; that your orator renders to each of its customers monthly statements for the gas consumed by each of said customers during the preceding month, and collects therefor within a short time thereafter; that unless said bills are promptly paid your orator, as is its right and privilege, discontinues the supply of gas to such customers, and that such is the only method by which your orator is enabled to
123 avoid great loss, by reason of the failure or inability of many of the customers and consumers of your orator to pay the bills for the gas consumed by them; and in this connection your orator shows and charges the fact to be that if the city of Chicago should be permitted to begin prosecutions against your orator for the failure of your orator to comply with the terms of said ordinance, that thereupon a large number of customers and consumers of your orator would decline to pay your orator the price fixed by it as aforesaid, and being the net rate of one dollar per thousand cubic feet, and would refuse to pay any sum or sums whatsoever to your orator over and above the sum fixed by the city of Chicago in said ordinance; and that if your orator should attempt to remove the meters in the houses of such customers or should attempt to discontinue the supply of gas to such customers, your orator would be immediately subjected to prosecutions and arrests on the part of the city of Chicago; that, if, on the other hand, your orator should permit the bills of said customers to run until the final determination of such suit or suits as the city of Chicago might bring against your orator for failure on the part of your orator to comply with the terms of the ordinance aforesaid, the outstanding bills of your orator would aggregate an enormous amount, which your orator is at present unable to calculate, and which it is impossible to calculate by any means whatsoever; and your orator shows that by means thereof and by reason of the financial irresponsibility of a large number of your orator's customers and consumers, your orator would be unable, in the event that it finally succeeded in defeating the prosecution or prosecutions brought against it by the city of Chicago, to collect from such customers and consumers the amount of such outstanding indebtedness; and thereby your orator shows unto the court and charges the fact to be that your orator would suffer enormous loss, the exact amount of which your orator is unable to calculate, and which your
124 orator says it is impossible to calculate in any respect whatsoever, but which, in the opinion of your orator, would amount to many hundreds of thousands of dollars, and that the damage to your orator would be irreparable and incalculable.

XXXII.

Your orator further shows and states the fact to be, that if your orator should fail to comply with the terms of said ordinance, and should decline to furnish gas at the rate fixed therefor in said ordinance, but, on the contrary should continue to demand of its customers the rate which your orator has fixed as being the just, fair and proper rate for your orator to charge to said customers, that is to say, should continue to charge said customers $1 net per thousand cubic feet for gas sold and distributed to them, that then, under and by virtue of the terms of said ordinance, any customer of your orator in the city of Chicago could begin a prosecution against your orator for a violation of the terms and conditions of said ordinance; and your orator charges the fact to be that in the event of the failure of your orator to comply with the terms and conditions of said ordinance, many thousands of such suits will be started by the customers of your orator in the city of Chicago, in addition to such suits as the city of Chicago may see fit to start in attempting to enforce the provisions of said ordinance: and your orator shows unto the court that thereby, and by means thereof, your orator would be subjected to a multiplicity of suits; that it would be subjected to enormous expense in defending the same; that by reason thereof your orator would be unable to attend to its ordinary and legitimate business and affairs, pursuant to the privileges and powers conferred upon it in and by its charter from the People of the State of Illinois, and that the litigation arising therefrom would be endless, and
125 the suits arising therefrom would be numberless. And your orator charges the fact to be that in the event of the failure of your orator to comply with the terms and conditions of said ordinance, the said city of Chicago will attempt to enforce the provisions of said ordinance, and to compel your orator to comply therewith. And your orator further charges that in pursuance of such efforts on the part of said city of Chicago to compel your orator to comply with the terms and conditions of said ordinance, said city of Chicago will begin, or cause to be begun, an enormous number of such suits, and will thereby harass and disturb your orator in the pursuit of its business aforesaid, and will make it impossible for your orator to conduct its business aforesaid in said city of Chicago because thereof. And your orator charges that it is unable to state the exact amount your orator would lose from even the temporary enforcement of said ordinance by the city of Chicago, but your orator charges it would be very largely in excess of two thousand dollars.

XXXIII.

And your orator further shows that the powers and privileges conferred upon your orator by the said charter to fix the rates for gas sold and distributed by your orator is a property right, and, as such, is protected by the Constitution of the United States and the laws thereof, and the provisions of said charter, wherein and whereby it is agreed by and between the People of the State of Illinois and your orator that the common council of the city of Chicago shall in

no case be authorized to compel your orator to furnish gas at a less rate than three dollears per thousand feet, is likewise a property right, and, as such, protected by the Constitution of the United States and the laws thereof.

126 XXXIV.

Your orator further shows that the passage of said ordinance and the enforcement thereof by the common council of the city of Chicago is and will be an attempt on the part of the said city of Chicago to reduce the price of gas manufactured, sold and distributed by your orator in and throughout the city of Chicago, in violation of the contract between your orator and the People of the State of Illinois, contained in its charter of incorporation, as hereinbefore set forth; and is a violation of the rights of your orator as guaranteed by the first clause of section 10 of article 1 of the Constitution of the United States of America, wherein and whereby it is provided that no State shall pass any law impairing the obligation of contracts; that it is a further violation of the rights of your orator as guaranteed to it by the fourteenth amendment to the Constitution of the United States of America, wherein and whereby it is provided that no State shall deprive any person of life, liberty or property without due process of law; and that the passage of said ordinance, and the enforcement thereof, by the city of Chicago is a further violation of the rights of your orator as guaranteed to it by the Constitution of the United States of America, and all amendments thereto, all of which constitutional guarantees this complainant invokes and relies upon.

Forasmuch, therefore, as your orator is without remedy save in a court of equity, where matters of this sort are properly cognizable and relievable, and to the end that the contract rights of your orator under its charter as aforesaid may be preserved, your orator prays that the City of Chicago may be made party defendant to this your orator's bill of complaint, and may be required to make full, true and direct answer to the same by a day certain to be fixed
127 by the court, but not under oath, the answer of said defendant under oath being expressly waived; that upon final hearing hereof the said ordinance so passed by the city council of the city of Chicago on the fifteenth day of October, 1900, entitled "An ordinance regulating and fixing the price of gas in the city of Chicago," may be adjudged and decreed to be inoperative, invalid, illegal, null and void, and of no force and effect as against the People's Gas Light and Coke Company, and in violation of the contract rights of your orator contained in its charter as aforesaid, and that it may be adjudged and decreed that by said charter of the People's Gas Light and Coke Company the People of the State of Illinois agreed with the People's Gas Light and Coke Company that the common council of the city of Chicago should never be authorized to compel the People's Gas Light and Coke Company to furnish gas at a less rate than three dollars per thousand cubic feet, and that such contract is a valuable property right of the said People's Gas Light and Coke Company.

That upon the filing of this amended bill of complaint a tempo-

rary restraining order may forthwith issue against the said defendant, The City of Chicago, restraining and enjoining the City of Chicago, its mayor, chief of police, city attorney, corporation counsel, and all other its officers, agents, servants and employés, and each, every and all of them, until the further order of the court, from in any way enforcing or attempting to enforce said ordinance adopted on October 15 1900, entitled "An ordinance regulating and fixing the price of gas in the city of Chicago," or any of the provisions thereof, against the People's Gas Light and Coke Company, or from in anywise interfering with the People's Gas Light and Coke Company or with the property or business of said People's Gas Light and Coke Company by the commencement of actions or otherwise,
128 founded upon said ordinance of October 15, 1900, until the further order of the court herein, and that upon final hearing hereof the said injunction be made perpetual; and that if at any time hereafter, and prior to the final hearing of said cause, any resident or residents, citizens or citizen, of the city of Chicago, consumers of gas or otherwise furnished by the People's Gas Light and Coke Company, shall enforce or attempt to enforce said ordinance passed by the city council of the city of Chicago on October 15th, 1900, or begin any prosecution thereunder in any of the courts of the State of Illinois, or take any steps or other proceedings thereunder, your orator may have leave forthwith to make such persons parties defendant to this your orator's bill of complaint, and that said persons and each of them may forthwith be enjoined and restrained as heretofore and herein prayed for by your orator in this bill of complaint, and that upon final hearing the injunction against such person or persons may be made perpetual. And that your orator may have such other or further or different relief in the premises as the nature of the case may require.

And may it please your honors to grant unto your orator the People's writ of injunction, to be directed to the said City of Chicago, its mayor, chief of police, city attorney, corporation counsel, and all others, its officers, agents, servants and employés, restraining them and each of them as by your orator is heretofore and herein prayed.

And may it please your honors to grant the writ of summons in chancery, directed to the marshal of the northern district of the State of Illinois, northern division thereof, commanding him that he summon said defendant, The City of Chicago, to appear before this honorable court by a day certain to be fixed by the court, and then and there to answer this your orator's amended bill of complaint.

129 And your orator will ever pray, etc.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY,
By SEARS, MEAGHER & WHITNEY,
Its Solicitors.

JOHN W. GRIGGS,
W. F. SHEEHAN,
JAMES F. MEAGHER,
THOMAS A. MORAN,
Of Counsel.

STATE OF ILLINOIS, } ss:
County of Cook, }

C. K. Wooster, being first duly sworn, on oath deposes and says that he is the vice-president of the People's Gas Light and Coke Company; that he has read the foregoing bill of complaint, and that the matters and things therein set forth are true of his own knowledge.

C. K. WOOSTER.

Subscribed and sworn to before me this fourth day of June, A. D. 1902.

[SEAL.] FRED L. BLACKINTON,
Notary Public.

(Endorsed:) Filed June 5, 1902, as of Jan'y 15, 1902 Marshall E. Sampsell, clerk.

130 And on to wit: the 6th day of June, 1902, came the City of Chicago by its solicitors Granville W. Browning and Charles M. Walker, corporation counsel, and filed in the clerk's office of said court in said entitled cause its certain demurrer to the amended bill in words and figures following to wit:

Demurrer to Amended Bill.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY }
vs.
THE CITY OF CHICAGO. }

The demurrer of the defendant, The City of Chicago, to the complainant's amended bill of complaint.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's amended bill of complaint contained, to be true in such manner and form as the same are therein set forth and alleged, does demur to the said amended bill, and for cause of demurrer, shows that the said complainant has not in and by its said amended bill, made or stated such a case as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for, from or against this defendant.

Therefore, and for divers other good causes of demurrer appearing in the said amended bill, this defendant does demur
131 thereto, and prays the judgment of this honorable court, whether it shall be compelled to make any further or other answer to the said amended bill; and it humbly prays to be hence

dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

GRANVILLE W. BROWNING,
Solicitor of the City of Chicago.

CHARLES M. WALKER,
Corporation Counsel.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
THE CITY OF CHICAGO.

I, Granville W. Browning, do hereby certify that I am the solicitor of record of the defendant, The City of Chicago, in the above-entitled cause, and do further certify that the foregoing demurrer to complainant's amended bill of complaint is well founded in point of law.

GRANVILLE W. BROWNING.

132 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
THE CITY OF CHICAGO.

Granville W. Browning, being first duly sworn, deposes and says that he represents The City of Chicago, defendant in the above-entitled cause, and that the foregoing demurrer of the said defendant is not interposed for delay.

GRANVILLE W. BROWNING.

Subscribed and sworn to before me, this 5th day of June, A. D. 1902.

VIRGINIA GUEST,
[SEAL.] *Notary Public.*

(Endorsed:) Filed June 6, 1902. Marshall E. Sampsell, clerk.

133 And on to wit: the 30th day of July, 1902, there was filed in the clerk's office of said court in said entitled cause a certain opinion in words and figures following to wit:

Opinion.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
CITY OF CHICAGO.

I have considered with great care the arguments, both oral and printed, submitted on the rehearing, and see nothing that ought to change the opinion already filed, or the order that followed.

The only serious question is whether, in view of the recent decision of the Supreme Court of the United States, in the Detroit traction case, the gas consolidation act of 1898 is to be held to embody a contract between the State and the complainant whereby, from that time forth gas was to be furnished by the complainant at a fixed rate unalterable by either party without the consent of the other. The language of the section relied on is as follows: "Such corporation (the consolidated corporation) shall not increase the price charged by it for gas of the quality furnished to consumers during any part of the year immediately preceding such purchase or lease or such consolidation or merger." It is averred that such price for the "year immediately preceding" was not less than one dollar per thousand.

If this rate thus named in the act was meant as a maximum rate only, the Detroit case does not apply; if it was meant however, as an agreed fixed rate unalterable by either party, the decision does apply.

134 The Detroit case announced no new law. It is fundamental that no city or State can constitutionally enact any legislation that impairs the validity of existing contracts. The Detroit case merely held that under the legislation of Michigan the ordinance rate named, though in words a maximum rate only, must be regarded as an agreed fixed rate. The decision does not modify the previous decisions in the Illinois water cases where similar language in water ordinances *are* construed as maximum rates only. The question involved therefore, is not so much a question of constitutional law as a question of interpretation; namely, what was the legislative intent in the enactment of the gas consolidation act of 1898.

The act was not special—applying to complainant only. It applies to every gas company and to every city in the State. It contains no mandate, as in the Detroit case, that there shall be an agreed constant rate. It is preceded by no legislation looking to such constant rate. Its language, therefore, must be given its plain ordinary significance; and so construed I can see in it no purpose other than to fix, not a rate unalterable by either party, but a rate beyond which the consolidated companies may not go. To give it any other interpretation would be to import into the act a strained and artificial meaning.

I agree with counsel that neither city nor State must be allowed to run over plain contract rights. Against attempts of that kind the courts have always stood as a wall of defense. But it is equally important that no just right of the State should be impaired, nor a meaning put into its legislation that was not intended. When it comes to ascertaining what are the boundaries of the powers of the State, the courts must not forget that there are boundaries to their own powers as well.

The demurrer to the amended bill will be sustained and the bill dismissed for want of jurisdiction in this court over the cause of action set forth.

P. S. GROSSCUP,
Circuit Judge.

(Endorsed:) Filed July 30, 1902. Marshall E. Sampsell, clerk.

135 And on to wit: the 30th day of July, being one of the days of the regular July term of said court, 1902, in the record of proceedings thereof in said entitled cause, before the Hon. Christian C. Kohlsaat, by the direction of the Hon. Peter S. Grosscup, circuit judge, appears the following entry to wit:

Order of July 30, 1902, Sustaining Demurrer to Bill of Complaint as Amended.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
CITY OF CHICAGO. } 25780.

This matter coming on to be heard upon demurrer of the defendant to the amended bill of complaint herein, the court having heard argument of counsel, and being fully advised in the premises,

It is hereby ordered, adjudged and decreed, that said demurrer be and the same is hereby sustained; that said amended bill be and the same is hereby dismissed for want of jurisdiction at the cost of complainant, and that defendant have execution for said costs.

And thereupon the complainant enters its motion herein for an appeal to the Supreme Court of the United States, which is allowed, and the court fixes the amount of the appeal bond at the sum of six hundred thousand dollars to be filed within sixty days, which bond, when so filed and approved shall operate as a supersedeas.

And by agreement of the parties in open court it is stipulated by counsel for the defendant that pending said period of sixty days from this date the former restraining order entered herein on January 2, 1901, remain in force.

136 And afterwards, to wit: on the fifteenth day of September, A. D. 1902, the complainant, by its solicitors filed in said cause its petition for appeal to the Supreme Court of the United

States with its assignment of errors and appeal bond, respectively in words and figures following, to wit:—

137 In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY, Complainant,
versus
CITY OF CHICAGO, Defendant.

The above-named complainant, The People's Gas Light and Coke Company, conceiving itself aggrieved by the order and decree made and entered in the above-named court in the above-entitled cause under date of July 30th, 1902, wherein and whereby, among other things, it was and is ordered and directed that the bill of complaint of the said complainant be dismissed for want of jurisdiction, does hereby appeal to the Supreme Court of the United States from said order and decree, for the reasons set forth in the assignment of errors which is filed herewith; and it prays that this its petition for its said appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated September 12th, 1902.

SEARS, MEAGHER & WHITNEY,
Solicitors for The People's Gas Light and Coke Company, Complainant.

138 The foregoing petition on appeal is granted, and the claim of appeal therein made is allowed.

Done this 15 day of Sep. 1902.

KOHLSAAT, *Judge.*

(Endorsed:) Filed Sep. 15, 1902, Marshall E. Sampsell, clerk.

139 In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY, Complainant,
vs.
CITY OF CHICAGO, Respondent.

Comes now the complainant and files the following assignment of errors, upon which it will rely its appeal from the decree made by this honorable court on the thirtieth day of July, 1902, in the above-entitled cause:

1. The United States circuit court, in and for the northern district of Illinois, northern division, erred in dismissing the complainant's amended bill of complaint in the above-entitled cause.

2. The court erred in dismissing said suit, and entering a final

decree therein in favor of the said City of Chicago, for its costs against said The People's Gas Light and Coke Company.

3. The court erred in dismissing the complainant's amended bill of complaint, in manner and form as shown by the record of said suit and proceedings.

4. The court erred in refusing to grant to complainant the relief asked and prayed for in and by said complainant's amended bill of complaint.

140 5. The court erred in refusing to enter a decree in favor of complainant, in accordance with the prayer of the amended bill of complaint.

In order that the foregoing assignment of errors may be and appear of record, the complainant presents the same to the court, and prays that such disposition be made thereof as in accordance with the law and the statutes of the United States in such cases made and provided, and complainant prays a reversal of the decree of dismissal made and entered by said court, in said cause.

SEARS, MEAGHER & WHITNEY,
Solicitors for the People's Gas Light and Coke Company.

(Endorsed:) Filed Sep. 15, 1902, Marshall E. Sampsell, clerk.

141 *Know all men by these presents*, that we, The People's Gas Light and Coke Company, a corporation organized and existing under the laws of the State of Illinois, as principal, and Pacific Surety Company, of California, a corporation organized and existing under the laws of the State of California, and authorized to act as surety by the laws of the State of Illinois, as surety, are held and firmly bound unto the City of Chicago, in the full and just sum of six hundred thousand dollars ($600,000), lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, and our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this tenth day of September, in the year of our Lord, one thousand nine hundred and two.

Whereas, lately at a session of the circuit court of the United States, for the northern district of Illinois, northern division, in a suit pending in said court, between The People's Gas Light and Coke Company, complainant, and The City of Chicago, defendant, a decree was rendered dismissing the bill of complaint filed in said suit, for want of jurisdiction, and the said The People's Gas Light and Coke Company having obtained from said court an order allowing an appeal to the Supreme Court of the United States, to reverse the decree so rendered in the aforesaid suit; and a citation directed to the said City of Chicago is about to be issued, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty (30) days from the date hereof.

Now, the condition of the above obligation is such, that if the said The People's Gas Light and Coke Company shall prosecute its said appeal to effect, and answer all damages and costs that may be

awarded against it, if it fails to make its plea good, then the
142 above obligation to be void; else to remain in full force and virtue.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY,
[SEAL.] By GEO. O. KNAPP, *Its President.*

Attest: L. A. WILEY, *Secretary.*

PACIFIC SURETY COMPANY OF CALIFORNIA,
[SEAL.] By STUART G. SHEPARD,
Resident Assistant Secretary.

Attest: ALLAN C. DURBOROW,
General Agent.

Approved: Sep. 15, 1902,

KOHLSAAT, *Judge.*

O K.
GRANVILLE W. BROWNING,
Sol'r of the City of Chicago.

O K.
MARSHALL E. SAMPSELL, *Clerk.*

(Endorsed:) Filed Sep. 15, 1902, Marshall E. Sampsell, clerk.

143 And on the same day, to wit: September 15, A. D. 1902, being one of the days of the regular July term of said court, 1902, in the record of proceedings thereof in said entitled cause, before the Hon. Christian C. Kohlsaat, district judge, appears the order allowing said appeal, as follows, to wit:

144 *Order.*

Circuit Court of the United States, Northern District of Illinois, Northern Division.

MONDAY, *September* 15, 1902.

Present: Hon. Christian C. Kohlsaat, district judge.

THE PEOPLE'S GAS LIGHT & COKE COMPANY
vs. } 25780.
THE CITY OF CHICAGO, ETC.

Now comes the complainant, by its solicitor, and files its petition for appeal to the Supreme Court of the United States, together with its assignments of error, and its appeal bond in the penalty of six hundred thousand dollars ($600,000.00) with the Pacific Surety Company of California as surety, and the complainant having now complied with the rules of said court and the order entered herein on July 30, 1902,

It is thereupon ordered that said appeal be and the same is hereby allowed to the Supreme Court of the United States and that a transcript of the record herein be transmitted to the clerk of said court within thirty days.

145 NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, Marshall E. Sampsell, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said court and made in accordance with præcipe filed in the cause entitled The People's Gas Light and Coke Company, complainant, vs. City of Chicago, as the same appear from the original records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the city of Chicago, in said district this 20th day of September A. D. 1902.

MARSHALL E. SAMPSELL, *Clerk.*

146 UNITED STATES OF AMERICA, ss:

To the City of Chicago, Carter H. Harrison, mayor of the city of Chicago; Charles M. Walker, corporation counsel to the city of Chicago, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an order allowing an appeal entered in the clerk's office of the circuit court of the United States, for the northern district of Illinois, northern division, wherein The People's Gas Light and Coke Company is complainant and appellant, and you are defendant and appellee, to show cause, if any there be, why the decree rendered against the said complainant and appellant, as in the said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Christian C. Kohlsaat, judge of the United States district court, in and for the northern district of Illinois, this 15th day of September, in the year of our Lord one thousand nine hundred and two.

KOHLSAAT, *Judge.*

Filed Sep. 20 1902.

MARSHALL E. SAMPSELL, *Clerk.*

Service accepted for the City of Chicago.

GRANVILLE W. BROWNING,
Sol. for the City of Chicago.

UNITED STATES OF AMERICA,
State of Illinois, County of Cook, } ss:

I hereby certify that I served the within citation on Granville W. Browning of the city of Chicago, Illinois, on the 17 day of September, 1902, at the city of Chicago, county of Cook, in the State of Illinois, by then and there delivering to the said Granville W. Browning, personally, a true copy of the within citation, which was done by order of att'y for appellant.

Dated at Chicago, in the State of Illinois, this 17th day of September, 1902.

One service	2.00
" mile	6
	$2.06

JOHN C. AMES,
United States Marshall,
By A. A. BACH, *Deputy.*

147 [Endorsed:] 2517. 25780. Supreme Court of the United States. The People's Gas Light and Coke Company *versus* City of Chicago. Citation to the Supreme Court of the United States.

Endorsed on cover: File No. 18,672. N. Illinois C. C. U. S. Term No. 444. The People's Gas Light and Coke Company, appellant, *vs.* The City of Chicago. Filed September 25", 1902.

Supreme Court of the United States, October Term, 1903.

THE PEOPLES GAS LIGHT AND COKE CO., Appellant,
vs.
THE CITY OF CHICAGO.
No. 132.

Mr. Francis J. Kearful, in behalf of counsel for the appellant, submitted to the consideration of the court a motion for a writ of certiorari and a stipulation of counsel in relation thereto. Whereupon, it is now here ordered by the court that said motion be, and the same is hereby, granted, and that the certified transcript presented with said motion and stipulation be taken and filed as a return to the writ of certiorari, December 9, 1903.

(18672.)

Supreme Court of the United States, October Term, A. D. 1903.

THE PEOPLES GAS LIGHT AND COKE COMPANY, Appellant,
vs.
THE CITY OF CHICAGO, Appellee.
No. 132.

The appellee in the above entitled cause hereby acknowledges due service of notice of the presentation to this honorable court of the petition for certiorari hereto attached; admits the making of the stipulation of December 5, 1903, and the entry of the order on said date *nunc pro tunc* as of July 30, 1902, all as in said petition for certiorari set forth; and consents that said petition for certiorari may be granted by this honorable court, or, if this honorable court shall deny said petition for certiorari, the appellee consents that the record in the above entitled cause may be amended, on motion of appellant, and without further notice to appellee, so as to correct the decree of July 30, 1902, and the opinion of the circuit court of the United States, for the northern district of Illinois, in accordance with the terms and provisions of the stipulation of December 5, 1903, aforesaid: the intent and meaning of this consent being that said petition for certiorari may be granted by this honorable court, or that the record in the above entitled cause may be amended, so as to correct the decree and opinion aforesaid, in accordance with the terms and provisions of said stipulation.

Chicago, December 7, 1903.

WILLIAM D. GUTHRIE,
Of Counsel for the People's Gas Light and Coke Company.

———, ———,
Corporation Counsel for the City of Chicago.
GRANVILLE W. BROWNING,
Solicitor for the City of Chicago.

EDGAR B. TOLMAN,
Corporation Counsel, of Counsel.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE PEOPLES GAS LIGHT AND COKE COMPANY
vs.
CITY OF CHICAGO. } 25780.

To the clerk of the above-entitled court:

You will please prepare supplemental transcript of the record in this cause, to be filed in the office of the clerk of the Supreme Court of the United States under the appeal heretofore perfected to said court, and include in the said transcript the following pleadings, proceedings and papers on file, to wit:

Stipulation of December 5th, 1903;

Order of December 5th, 1903, *nunc pro tunc* as of July 30th, 1903.

Said supplemental transcript to be prepared as required by law and the rules of this court, and the rules of the Supreme Court of the United States, and on file in the office of the clerk of the said Supreme Court of the United States at Washington, forthwith.

SEARS, MEAGHER AND WHITNEY,
Solicitors for Appellant.

Dated Chicago, December 5th, 1903.

Placita.

Pleas in the circuit court of the United States for the northern division of the northern district of Illinois, begun and held in the United States court room, in the city of Chicago, in said district, before the Honorable Peter S. Grosscup, judge of said court, on Thursday, the 30th day of July, in the year of our Lord, one thousand nine hundred and three, being one of the days of the regular July term of said court, of the year last aforesaid, and of our Independence the *the* one hundred and twenty-eighth year.

MARSHALL E. SAMPSELL, *Clerk.*

THE PEOPLES GAS LIGHT AND COKE COMPANY
vs.
CITY OF CHICAGO. } Gen. No. 25780.

Be it remembered that on this day, to-wit, the 5th day of December, A. D. 1903, there was filed in the office of the clerk of said court a stipulation in writing in the following words and figures, to-wit:

United States Circuit Court for the Northern District of Illinois, Northern Division.

THE PEOPLES GAS LIGHT AND COKE COMPANY
vs.
CITY OF CHICAGO.
No. 25780.

It is hereby stipulated and agreed by and between the parties in the above entitled suit that the decree heretofore entered in the above entitled suit on or about the thirtieth day of July, 1902, in the absence of the Honorable Peter S. Grosscup, circuit judge, before whom the case was heard and argued, and which decree does not correctly recite the judgment as intended by the court, be amended *nunc pro tunc* as of said July 30th, 1902, so as to strike therefrom, after the word "dismissed," the words "for want of jurisdiction," and to insert in lieu thereof the words "upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the city council under the laws of the State of Illinois;" that an order or decree so amending and correcting said decree be forthwith entered without prejudice to any of the proceedings heretofore had or to the appeal from said decree of July 30th, 1902, now pending in the Supreme Court of the United States, and that such proceedings be had in said Supreme Court as shall effectuate the amendment of said decree *nunc pro tunc* as fully to all intents and purposes as if contained in the original record now in said Supreme Court, so that the appeal may be heard and decided on the decree as now amended *nunc pro tunc*.

It is also hereby stipulated and agreed that the opinion of the court on rehearing be likewise amended *nunc pro tunc*, so as to omit therefrom, after the word "dismissed" the words "for want of jurisdiction in this court over the cause of action set forth," and to insert in lieu thereof the words, "upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the city council under the laws of the State of Illinois," and that an order be entered amending the record accordingly.

Chicago, December 5, 1903.

SEARS, MEAGHER & WHITNEY,
Solicitor for Peoples Gas Light & Coke Company.
GRANVILLE W. BROWNING,
Solicitor for the Defendant, The City of Chicago.

(Endorsed:) Filed Dec. 5, 1903. Marshall E. Sampsell, clerk.

Afterwards on the same day and year, to-wit, the 5th day of December, A. D. 1903, being one of the days of the regular July term of said court, in the record of proceedings thereof, in the above en-

titled cause, before the Hon. Peter S. Grosscup, circuit judge, appears the following entry, to-wit:—

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
CITY OF CHICAGO. } Gen. No. 25780.

On reading and filing the annexed consent and stipulation to the entry of this order, which is hereby made a part hereof, it is

Ordered and decreed that the final order and decree heretofore entered July 30, 1902, in the above entitled suit now pending on appeal to the Supreme Court of the United States, be and the same hereby is amended *nunc pro tunc* as of said July 30, 1902, so as to state the true decision of the court by striking therefrom after the word, "dismissed," the words, "for want of jurisdiction," and inserting in lieu thereof the words "upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the city council under the laws of the State of Illinois" and that the record on appeal be and the same hereby is amended accordingly, so that said appeal may be heard and decided on the decree as now amended *nunc pro tunc*.

NORTHERN DISTRICT OF ILLINOIS, *Northern Division*, } *ss:*

I, Marshall E. Sampsell, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be true and complete copies of stipulation filed on the 5th day of December, A. D. 1903, and the order entered of record in said court on said last above mentioned date, amending the final order and decree heretofore entered on the 30th day of July, A. D. 1903. And I further certify that said stipulation and order filed and entered on the 5th day of December, 1903, as aforesaid, constitute a true and complete supplemental transcript of the record of all proceedings had, since the allowance of the appeal in the cause wherein The People's Gas Light and Coke Company is the complainant and The City of Chicago is the defendant, as the same appear from the original files and records of said court, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 5th day of December, A. D. 1903.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk*.

[Endorsed:] File No. 18672. Supreme Court U. S., October term, 1903. Term No. 132. The Peoples Gas Light and Coke Co., app't, *vs.* The City of Chicago. Stipulation that writ of certiorari to correct record issue and certified transcript ordered filed as return to said writ. Filed Dec. 9th, 1903.